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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 7.—Original.

EX PARTE, THE MILWAUKEE AND PRAIRIE DU CHIEN RAILWAY COMPANY,

vs.

THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN, AND OTHERS.

APPLICATION FOR PROHIBITION.

FILED MAY 14, 1867.

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1 In Supreme Court of the United States, of the December term of said Court, A. D. 1866.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that at the court-room of the Supreme Court of the United States of America, in the capitol, in the city of Washington, in the district of Columbia, before the justices of said court, to wit: on the 7th day of May, A. D. 1867, as yet of said term, comes the Milwaukee and Prairie du Chien Railway Company, by Asahel Finch, jr., and Matthew H. Carpenter, its counsel, and gives the court now here to be informed:

That it is a corporation created by and existing under the laws of the State of Wisconsin, and hath its principal place of business, and its residence, in the State of Wisconsin.

That heretofore, to wit: on the 3d day of April, A. D. 1867, Samuel B. How, of New Brunswick, New Jersey; John Catlin, of Elizabeth, New Jersey; both citizens of the State of New Jersey; James L. Bogert, of New Orleans, Louisiana, and a citizen of the State of Louisiana; Thomas C. Streets, of Chippewa, Canada West, an alien, and a subject of the Queen of Great Britain; G. D. Rosengarten, of Philadelphia, Pennsylvania, and a citizen of the State of Pennsylvania; Grace J. Coe, Samuel G. Coe, William L. Lockwood, and George B. St. John, all of Norwalk, Connecticut, and citizens of the State of Connecticut; Charles P. Williams, of Stonington, Connecticut, and William A. Cummings, of Darien, Connecticut, both

citizens of the State of Connecticut; exhibited their bill of complaint
in the circuit court of the United States, for the district of
2 Wisconsin, in equity, against the Milwaukee and Prairie du
Chien Railway Company, the Milwaukee and St. Paul Railway Company, corporations created by the laws of the State of Wisconsin, and situated and having their principal office and business in the State of Wisconsin; Alexander Mitchell, Hans Crocker, and Sherburne S. Merrill, of Milwaukee, Wisconsin, and citizens of the State of Wisconsin; and against Russell Sage, Frederick P. James, Walter S. Gurnee, Nathaniel A. Cowdrey, Joseph Rudd, and Henry C. Stimson, all of the city of New York, and citizens of the State of New York; the Iowa and Minnesota Railway and Construction Company, a corporation created under the laws of the State of Iowa, and located and doing business in the State of Iowa; the McGregor Western Railway Company, a corporation created under the laws of the State of Iowa, and located and doing business in the State of Iowa; and the Minnesota Central Railway Company, a corporation created under the laws of the State of Minnesota, and located and doing business in the State of Minnesota; a copy of which bill of complaint is hereto attached, and marked exhibit No. 1; that thereupon a subpœna issued, a copy of which with the return of the marshal thereon endorsed, showing service thereof, is hereto attached and marked exhibit No. 2; that the following named defendants in said bill duly entered their appearance in defence of said bill of complaint, viz: Alexander Mitchell, Hans Crocker, Sherburne S. Merrill, Walter S. Gurnee, Nathaniel A. Cowdrey, the Milwaukee and St. Paul Railway Company, and the Milwaukee and Prairie du Chien Railway Company.

That the Milwaukee and Prairie du Chien Railway Company, one of said defendants, filed and served its demurrer to said bill of complaint, a copy of which is hereto attached and marked exhibit No. 3; that each of the following named defendants to said bill, also filed a demurrer to said bill in like form and of the same substance and effect as that filed by said Milwaukee and Prairie du Chien Railway Company, viz: Alexander Merrill, Hans Crocker, Sherburne
S. Merrill, Walter S. Gurnee, Nathaniel A. Cowdrey, the Mil-
3 waukee and St. Paul Railway Company, and the Milwaukee and Prairie du Chien Railway Company.

That afterwards, to wit: on the 18th day of April, A. D. 1867, the demurrers to said bill were argued before said circuit court; and on the 22d day of April, A. D. 1867, the said complainants in said bill moved said circuit court for the appointment of a receiver, and for a preliminary injunction, according to the prayer of the bill, and the said defendants who had appeared as aforesaid filed and exhibited affidavits in opposition to the statement of facts in said bill, and the said complainants exhibited and filed affidavits in support of said bill; all of which affidavits are supposed to be immaterial to this suggestion; and the said several demurrers were further argued before said circuit court in connection with the motion of said complainants for the appointment of a receiver and the granting of an injunction

according to the prayer of said bill; and that thereupon, and afterwards, to wit: on the 6th day of May, A. D. 1867, the said circuit court made an order in said cause commenced by said bill, a copy of which is hereto attached and marked Exhibit No. 4; and afterwards, to wit: on the 6th day of May, A. D. 1867, a writ of injunction was duly issued out of said circuit court and has been served upon the said Milwaukee and Prairie du Chien Railway Company, a copy of which is hereto attached and marked Exhibit No. 5.

That prior to the exhibiting of said bill of complaint, as herein before stated, the Milwaukee and Prairie du Chien Railway Company had made and entered into a certain contract of lease with the McGregor Western Railway Company, a copy of which is Schedule C, attached to said bill of complaint; that very soon after the day of the date of said lease contract the said Milwaukee and Prairie du Chien Railway Company entered and took possession under and according to said lease, and within three years from the time of taking possession as aforesaid, to wit: the 20th day of September, A. D. 1866, said last named company exercised the option and right reserved to and conferred upon it by said lease, to purchase the railroad and other
4 property, the premises of said lease; and immediately thereafter, and before the exhibiting of said bill of complaint, gave due notice thereof to the said McGregor Western Railway Company; and that thereupon, the said Milwaukee and Prairie du Chien Railway Company became bound to do and perform all the several things in said lease in that behalf provided, viz: among other things, to issue to the holders of the bonds of the said McGregor Western Railway Company, its, said Milwaukee and Prairie du Chien Railway Company's, second preferred stock, dollar for dollar; that is, dollar of stock for dollar of bonds; not exceeding eighteen thousand dollars per mile for the first sixty miles of said railroad, and not exceeding fifteen thousand dollars per mile for each mile of said road that might be constructed beyond said sixty miles, as more fully appears from said lease:

2. Said Prairie du Chien Railway Company also became bound to give to the stockholders of the said McGregor Western Company one hundred dollars of its common stock for two hundred dollars of the stock of said McGregor Western Company, not exceeding of the stock of said McGregor Western Company twenty thousand dollars per mile of the road constructed.

That the said Prairie du Chien Company in and by the resolution of its board of September 20, 1866, (copy of which is embraced in Schedule D, attached to said bill of complaint,) made provision for performing said contract on its behalf, and had thereafter and before the filing of said bill of complaint delivered some portion of its said stock in exchange for the stock and bonds of the said McGregor Western Company; and some portion of said stock created by said resolution is still on hand ready to be so exchanged, according to the provisions of said lease contract.

That prior to the filing of said bill of complaint, to wit: on the 20th day of September, 1866, and after it had exercised the option

aforesaid, the said Milwaukee and Prairie du Chien Railway Company made and entered into a certain contract with the Iowa and Minnesota Railway and Construction Company, the substance of which is shown by Schedule E, attached to said bill of com-
5 plaint for the construction of eighty-five miles of said railroad, from Cresco, in Iowa, to Owatona, in Minnesota; and prior to the filing of said bill of complaint the said construction company had entered upon the performance of said contract on its behalf, had purchased six thousand tons of iron, and expended large sums in grading and purchase of other material for the superstructure of road to be by it constructed, to the amount of about eight hundred thousand dollars; that by a resolution of the board of the Prairie du Chien Company which is embraced in Schedule E, attached to said bill of complaint, said last named company created one million dollars of its common stock for the purpose of keeping and performing said contract on its behalf.

That all of said contracts were legal and valid, and within the corporate powers of said several corporations to make and enter into; that they are still in full force and obligatory upon the said Prairie du Chien Company; and that said latter company has no means with which to keep and perform its said contract obligations except by using the stock and bonds described in said resolutions of its board of directors; that the injunction aforesaid prohibits said company from so doing; and thus and thereby ties its hands and puts it out of its power to perform said contracts on its behalf.

That neither said contracts have been assigned or in any manner made over to any party, person, or corporation within the State and district of Wisconsin; and the said Milwaukee and Prairie du Chien Railway Company is under obligations to perform and fulfil the same on its part according to the terms and legal effect thereof, with the other parties thereto respectively.

That although the Iowa and Minnesota Railway and Construction Company, the McGregor Western Railway Company, and the Minnesota Central Railway Company, are named as defendants in said bill of complaint, yet each and all said corporations are without the jurisdiction of the said circuit court of the United States for the district of Wisconsin, and cannot be compelled to submit thereto; that no legal service of process from said circuit court for the dis-
6 trict of Wisconsin has been or can be had upon said companies, or either of them; that neither of said companies has entered its appearance in said suit in said circuit court, or in any way submitted itself to the jurisdiction thereof; and the said Milwaukee and Prairie du Chien Railway Company, on information and belief, shows and suggests that neither of said three foreign corporations above-named intend to appear or submit to the jurisdiction of said circuit court for said district; and therefore that said circuit court has no jurisdiction or lawful authority to entertain the said bill of complaint, or to take any proceedings or grant any relief thereon, in regard to the said contracts made and entered into by said Milwaukee and Prairie du Chien Railway Company as aforesaid; and that the said

circuit court of the United States for the said district of Wisconsin, has transcended and exceeded its jurisdiction and lawful authority in its proceedings heretofore in the suit commenced by the exhibiting of said bill of complaint, in the following particulars, to wit:

1. In overruling the demurrer of the Milwaukee and Prairie du Chien Railway Company to the said bill of complaint, and ordering said company to answer the whole of said bill of complaint, including that part of said bill which relates to the said contracts hereinbefore mentioned.

2. In granting and issuing the writ of injunction in manner and form as hereinbefore stated, by which the said Milwaukee and Prairie du Chien Railway Company is prevented, forbidden and enjoined from keeping and performing the several promises, agreements and undertakings to be by it kept and performed according to the terms, provisions, conditions, and obligations of the said contracts respectively; which said contracts are a subject matter over which said circuit court has not, and cannot obtain any jurisdiction whatever.

The said Milwaukee and Prairie du Chien Railway Company further suggest that inasmuch as the said circuit court has not acquired and cannot acquire jurisdiction over the other parties to said contracts respectively, and cannot by the orders heretofore made, or by any order or decree hereafter to be made in said suit, affect the rights of said other parties to said contracts respectively, nor rescind
7 or annul the said contracts, or either of them, the necessary effect and result of the said injunction and other proceedings of said circuit court, so far as the same restrain and enjoin the said Milwaukee and Prairie du Chien Railway Company from keeping and performing the several provisions and obligations on its part to be kept and performed as expressed in said contracts respectively, will be to subject the said Milwaukee and Prairie du Chien Railway Company to actions and heavy damages at the suit of said other parties to said contracts respectively.

That the said circuit court threatens and intends to proceed upon said bill of complaint and in the suit thereby commenced to final decree therein, and to continue said injunction, and will do so unless restrained and prohibited by this honorable court.

Wherefore, the said Milwaukee and Prairie du Chien Railway Company humbly imploring the aid and assistance of the said—the Supreme Court of the United States of America, prays a speedy remedy and a writ of prohibition to be issued out of, and under the seal of said Supreme Court, to be directed to the judges of the said circuit court of the United States for the district of Wisconsin; and also to the said Samuel B. How, John Catlin, James L. Bogert, Thomas C. Streets, G. D. Rosengarten, Grace J. Coe, Samuel G. Coe, William L. Lockwood, George B. St. John, Charles P. Williams, William A. Cummings, complainants named in the said bill of complaint, their counselors, attorneys, and solicitors, in this behalf whomsoever, to prohibit them, and every of them, to proceed further, or attempt to proceed further, upon the said bill of complaint, or in the suit commenced by said bill of complaint, in regard to the subject

matter of the said contracts hereinbefore mentioned, or either of them, or to restrain or prevent the said Milwaukee and Prairie du Chien Railway Company from keeping, fulfilling, executing, and performing all the terms, conditions, provisions, promises, and agreements by it and on its part and behalf to be kept, done, and performed as expressed in said contracts respectively; and from taking any further proceedings on the said bill of complaint touching the subject matter embraced in said contracts respectively, except
8 to dissolve the said injunction hereinbefore mentioned or to so far modify and change the same that the said injunction shall no longer restrain and enjoin the said Milwaukee and Prairie du Chien Railway Company from keeping and performing the obligation of said contracts respectively on its behalf; or for such other or different order, writ, or relief, as the nature of the case shall require; and that all the exhibits hereto attached may be taken and considered to be part hereof, with the same effect as though set forth herein; and it is granted to it, &c.

ASAHEL FINCH, Jr.,
MATT. H. CARPENTER,
Counsel for Milwaukee and Prairie du Chien Railway Company.

DISTRICT OF WISCONSIN, *ss:*

Sherburne S. Merrill, being first duly sworn on oath says, that he is a member of the board of directors, and general manager of the Milwaukee and Prairie du Chien Railway Company, named in the foregoing suggestion; that said company is a corporation created by, and existing under the laws of the State of Wisconsin; that he makes this vindication on its behalf; that he has heard, read, and knows the contents of the foregoing suggestion, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters he believes it to be true.

SHERBURN S. MERRILL.

Subscribed and sworn to before me this 11th day of May, A. D. 1867.

JOHN M. MILLER,
Clerk district court of the United States for the district of Wisconsin.

Exhibit No. 1.

9 To the judges of the circuit court of the United States for the district of Wisconsin:

SAMUEL B. HOW, of New Brunswick, New Jersey; John Catlin, of Elizebeth, New Jersey, both citizens of the State of New Jersey; James L. Bogart, of New Orleans, Louisiana, and a citizen of State of Louisiana; Thomas C. Streets, of Chippewa, Canada West, an alien, and a subject of

the Queen of Great Britain; G. D. Rosengarten, of Philadelphia, Pennsylvania, and a citizen of the State of Pennsylvania; Grace J. Coe, Samuel G. Coe, William L. Lockwood, and George B. St. John, all of Norwalk, Connecticut, and citizens of the State of Connecticut; Charles P. Williams, of Stonington, Connecticut, and William A. Cummings, of Darien, Connecticut, both citizens of the State of Connecticut, bring this, their bill, on behalf of themselves and of such other stockholders in the Milwaukee and Prairie du Chien Railway Company (except the defendants herein named, or those who may be hereafter made defendants) as may desire and be permitted by this court to join as plaintiffs in this suit,

against

THE MILWAUKEE and PRAIRIE DU CHIEN RAILway Company, the Milwaukee and St. Paul Railway Company, corporations created by the laws of the State of Wisconsin, and situated and having their principal office and business in the State of Wisconsin; Alexander Mitchell, Hans Crocker, and Sherburne S. Merrill, of Milwaukee, Wisconsin, and citizens of the State of Wisconsin; and against Russell Sage, Frederick P. James, Walter S. Gurnee, Nathaniel A. Cowdrey, Joseph Rudd, and Henry C. Stimson, all of the city of New York, and citizens of the State of New York; the Iowa and Minnesota Railway and Construction Company, a corporation created under the laws of the State of Iowa, and located and doing business in the State of Iowa; the McGregor Western Railway Company, a corporation created under the laws of the State of Iowa, and located and doing business in the State of Iowa; and the Minnesota Central Railway Company, a corporation created under the laws of the State of Minnesota, and located and doing business in the State of Minnesota.

And thereupon, your orators complain and say that on or about the eighteenth day of January, in the year eighteen hundred and sixty-one, the railroad of the Milwaukee and Mississippi Railroad Company, extending from Milwaukee to Prairie du Chien, and also to Monroe, in the State of Wisconsin, in said dis-

trict, was sold in pursuance of certain decrees of foreclosure, rendered in the United States district court for said district, by virtue of and under certain mortgages or deeds of trust theretofore made by the said Milwaukee and Mississippi Railroad Company, and bearing date respectively, the fifteenth day of June, 1852, the first day of April, 1853, the first day of June, 1855, the first day of July, 1856, and the seventeenth day of September, 1857; that at said sale, Louis H. Meyer, William Schall, and Louis A. Von Hoffmann, together with your orator, John Catlin, and one Allan Campbell, became and were purchasers of said railroad; that afterwards, on or about the twenty-first day of January, 1861, the said purchasers desiring to form a corporation under and by virtue of the laws of the State of Wisconsin, and especially by virtue of chapter 308 of the General Laws of said State of the year 1860, entitled "An act to facilitate and authenticate the formation of a corporation by the purchase of the Milwaukee and Mississippi Railroad Company," made their certificate in writing or articles of association, bearing date on said last mentioned day and signed by the said purchasers, a copy of which is hereunto annexed, marked "Schedule A," which your orators pray may be made and considered part of this their bill of complaint, and which said certificate was afterwards, on the said 21st day of January, 1861, duly filed in the office of the secretary of state of said State of Wisconsin.

And your orators further show, that, thereupon, the said Milwaukee and Prairie du Chien Railway Company, which is one of the defendants herein, entered into, and since then has held, and still holds possession of said railroad, together with all its rolling stock and other property, and it has since then operated and still operates the same as the owner thereof, and that said articles of association were afterwards ratified and confirmed by chapter 86, of the Local Laws of said State of Wisconsin, of the year 1862, entitled "An act to amend chapter 308 of the General Laws of 1860, entitled 'An act to facilitate and authenticate the formation of a corporation by the purchase of the Milwaukee and Mississippi Railroad Company,'" approved April 5, 1862.

And your orators further show, that they are, and at the time of the commitment of the several grievances, frauds, breaches of trust, and acts of malfeasance hereinafter mentioned, were the owners of six hundred and thirty-eight shares of the first-class preferred stock in said articles of association mentioned and issued in pur-
11 suance thereof, and of one hundred and ninety-three shares of the second-class preferred stock in said articles of association mentioned and issued in pursuance thereof, and one hundred shares of the scrip stock in said articles of association mentioned, each owning some of such shares in severalty.

And your orators further say, that in the month of June, 1866, the whole amount of scrip stock of said Milwaukee and Prairie du Chien Company outstanding was about three thousand nine hundred and five shares, amounting to $390,500

And the amount of first-preferred stock then outstanding was about thirty thousand eight hundred and fifty shares, amounting to 3,085,000

And the amount of second-preferred stock then outstanding was about ten thousand one hundred and forty shares, amounting to 1,014,000

And the amount of common stock then outstanding was about thirty thousand one hundred and forty shares, amounting to 3,014,000

And your orators further show, that up to the time of the annual election of directors of said Milwaukee and Prairie du Chien Railway Company, held in the month of June, 1866, the holders of the said preferred stock of the first and second class and of the said scrip stock, had elected the directors of said corporation, to the exclusion of the holders of the said common stock of said corporation, as provided by section four of said chapter 308, no dividend having up to that time been earned on the said common stock; that at said last mentioned election the holders of said common stock, although no dividend had yet been earned on the same, claimed and pretended to have the right to vote, and did vote at said election on their said common stock, and thereby succeeded in electing the following board of directors of said corporation, to wit: the defendants, Alexander Mitchell, Hans Crocker, Sherburn S. Merrill, Russel Sage, Walter S. Gurnee, Nathaniel A. Cowdrey, Frederick P. James, Joseph Rudd, and Henry C. Stimpson, without the consent and against the protest of the owners of the majority of the said preferred stock, whose votes were cast for other persons as directors at said election; that said new board of directors thereupon, immediately after said election, took possession of said railroad and the property, books and papers of said Milwaukee and Prairie du Chien Railway Company, and have since then held and still continue to hold possession and control of the same; and that the said defendant, Alexander Mitchell, has been and now is acting as President of said new board of directors.

12 And your orators further show, that up to the time of such election, the affairs of said corporation had been economically and judiciously managed, in the best interests of the stockholders, and for the benefit of the public and in accordance with law and the said articles of association; so that there was no floating debt except such as could be paid on demand, nor had the principal or interest of said mortgage been permitted to fall due or accumulate, but on the contrary had been greatly reduced, and were in the way to be soon wholly extinguished; that the issues of stock by said company had been cancelled to the amount of $514,200 00

that improvements on the railroad had been made and paid for to the amount of 295,707 37

that real estate necessary for the company had been paid for to the amount of 20,737 37

and that old liens had been paid to the amount of 50,020 15

making an aggregate value of $880,664 89

added to the property of the said company, besides the dividends regularly declared, whereby the stock of said company, of all classes, had greatly appreciated, and the said company was in excellent credit and standing. The common stock of said company had advanced from below nine dollars to over eighty dollars per share. But your orators show, that the said new board of directors at once entered upon a course of reckless and extravagant expenditure, involving the company heavily in debt, leaving the sinking fund unprovided for, and allowing the mortgage aforesaid to fall due, violating the law and the instructions of the stockholders, disregarding the interest of the said corporation and its shareholders, whereby the credit of the former has been greatly impaired, and the stock much depreciated; all of which has been fraudulently done, as your orators believe, for the pecuniary benefit of the said directors or the majority of them, and of certain other corporations, in which they or the majority of them were largely interested.

First. Your orators say, that it appears from the records and books of said Milwaukee and Prairie du Chien Railway Company, kept by said new board of directors to exhibit its transactions, and your orators therefore allege the fact to be, that at a meeting held by said directors at the city of New York, on the 12th day of September, 1866, at which were present the said defendants, Mitchell, Gurnee, Cowdrey, James, Rudd, and Sage, a certain recital and resolutions were unanimously adopted, a copy of which is hereunto annexed, marked "schedule B," and made part of this your orators' bill of complaint.

13 And your orators further say, that the dividend of three dollars per share in said resolutions mentioned, amounting to the sum of $90,420, as your orators are informed, believe, and allege, was paid out of the funds of said corporation to the said holders of said common stock in pursuance of said resolutions.

And your orators further allege and show, that prior to the repeal of section 7 of said chapter 308, to wit, prior to the sixteenth day of April, 1862, the then board of directors of said corporation had permanently, and not temporarily, as in said recital and resolutions stated, made the following investments and applications of the said surplus earnings amounting to $161,361 in said resolutions mentioned, to wit:

They had used in the payment of liens subject to which said railroad had been bought	$43,830 00
They had purchased and cancelled $84,800 preferred stock, at a cost of	70,672 49
They had paid to the sinking fund in the said articles of association provided for	4,400 00
Making a total payment of	$118,902 49

And leaving a remainder of about $42,400 of said surplus earnings, which remainder was afterwards, during the year 1862, expended and used by said board of directors in the extension of the track of said railroad, and in the building of a grain-elevator at Prairie du

'Chien, which said expenditure was deemed necessary by said board of directors, and was, as your orators believe, necessary and proper for the benefit of said corporation; all of which said expenditures and application of said surplus earnings appeared in the books and records of said corporation in the possession of said new board of directors, when they declared said pretended dividend by said recital and resolutions, and were, as your orators believe and charge, well known to the said persons at the time of the adoption by them of said recital and resolutions, and at the time of the payment of said dividend.

And your orators further show, that they are informed and believe, and therefore allege, that prior to the passage of chapter 88 of the general laws of said State of Wisconsin, entitled "an act in relation to the election of officers of corporations," approved April 11th, 1866, the defendants, Alexander Mitchell, Russell Sage, Walter S. Gurnee, Nathaniel A. Cowdrey and Frederick P. James, were directors of the Milwaukee and St. Paul Railway Company, one
14 of the defendants, which owns several railroads in the State of Wisconsin, since then have continued to be and now are such directors, and since then have had and now have, either alone, or with the aid and assistance of some other persons to your orators unknown, the control and management of the majority of the stock, and of the affairs of said Milwaukee and St. Paul Railway Company; that prior to the passage of said last mentioned law, the defendants Stimpson and Cowdrey, either alone, or with other persons to your orators unknown, confederating and conspiring together to obtain the control and management of the affairs and railroad of said Milwaukee and Prairie du Chien Railway Company, and to injure and defraud your orators and other holders of the said preferred stock of the last named corporation, procured the passage of the last mentioned act, and thereupon, the said Stimpson, who had previously controlled a large amount of the said common stock, sold and transferred to the defendant, the Milwaukee and St. Paul Railway Company, or to the said Mitchell, Sage, Gurnee, Cowdrey, and James, alone, or with others in trust for said last named company, about twenty-nine thousand shares of the common stock of said Milwaukee and Prairie du Chien Railway Company, which was paid for with the means of the said Milwaukee and St. Paul Railway Company, illegally used for that purpose as your orators believe; that the agreement for the said sale was made prior to the passage of the said last named act, and dependent upon the passage of an act conferring upon such common stock such right to vote. That by means of their control of the common stock, and some other stock, the said present directors procured themselves to be elected as aforesaid, and obtained the control of the said Milwaukee and Prairie du Chien Railway Company.

And your orators further show, that on the second day of July, 1866, as appears by the records of said last mentioned company, the said directors thereof loaned to said Milwaukee and St. Paul Railway Company the sum of forty-five thousand dollars of the funds of said Milwaukee and Prairie du Chien Railway Company, and afterwards,

as appears by the same records, paid to said Milwaukee and St. Paul Railway Company the further sum of $42,510, which, together with said 45,000 theretofore loaned, was applied by said railway companies as payment of the dividend, under the resolutions of September 12th, 1866, aforesaid on the common stock of said Milwaukee and Prairie du Chien Railway Company, then held by or in trust for said Milwaukee and St. Paul Railway Company; that said dividend, declared Sept. 12th, 1866, was not published until the month of January, 1867; that the defendants, the Milwaukee and St. Paul Railway Company, and Mitchell, Sage, Gurnee, Cowdrey, and James,
15 did not become owners of said common stock on which they received said dividend until long after the year 1861, and long after the said surplus earnings had been applied, paid, and used by the former board of directors for the benefit of said Milwaukee and Prairie du Chien Railway Company as aforesaid; that a portion of the common stock, amounting to over two hundred and twenty-five thousand dollars, upon which the said dividend was declared, was only issued after the 31st day of March, 1864, in pursuance of an act of the legislature of the State of Wisconsin, approved on that day, entitled "an act to authorize the Milwaukee and Prairie du Chien Railway company to issue stock to aid in adjusting and settling up outstanding farm mortgages, judgments, floating debts, income bonds, and stock of the late Milwaukee and Mississippi Railroad Company;" that on said 12th day of September, 1866, there was due, and since April 1st of that year left unpaid. to the sinking fund in said articles of association mentioned, about eighty-five thousand dollars, which remains yet due and unpaid, whereby the principal sum unpaid on the bonds and mortgage, issued as provided by said articles of association, and to pay which the said sinking fund was provided for in said articles, has become due, to the jeopardy and detriment of the interest of your orators in the bonds and preferred stock of said Milwaukee and Prairie du Chien Railway Company; that in addition to said $85,000 due said sinking fund, said last mentioned corporation, on said 12th day of September, 1866, owed to the Rogers, Locomotive Works about forty thousand dollars, which had then been due and unpaid since the 15th day of June, 1866, and was not paid until the 26th day of October, 1866; and that said directors voting in favor of said recital and resolutions of Sept. 12th, 1866, as aforesaid, knew at that time of the said several amounts then due said sinking fund and said locomotive works, said Nathaniel A. Cowdrey being himself one of the trustees, and the sole acting trustee, to whom said money for the sinking fund was due and payable.

And your orators further show, that they are informed and believe that, at the time when said last-mentioned recital and resolutions were adopted by said defendants, Mitchell, Gurnee, Cowdrey, James, Rudd, and Sage, they knew that the said surplus earnings for the year 1861 had been permanently and not temporarily applied and used by said Milwaukee and Prairie du Chien Railway Company for the payment of the liens subject to which said railroad had been purchased, for the purchase and retirement of preferred stock of

said corporation, and for the permanent and necessary improvement of said railroad hereinbefore more particularly stated; they knew that it was not just, equitable, or legal; that after the said
16 surplus earnings had been so applied, the amount thereof should be divided as they then resolved, and knew that said corporation had not then the ability to pay the said amount thereof; they knew that the said last-named corporation was then indebted as aforesaid, and could not, therefore, legally make a dividend on any stock, and that the capital stock of said company had not been reduced to six millions of dollars, and that seven per cent. of the whole stock had not been earned in one year, and therefore no dividend could lawfully be declared upon the common stock aforesaid. Your orators, therefore, allege that the said recital and resolutions were adopted and carried into effect wrongfully and fraudulently, for the purpose of benefiting the holders of said common stock, and raising the value of the shares of the said Milwaukee and St. Paul Railway Company, which received $87,510 of said dividend, and thereby enriching the said directors, who were largely interested in said last-named company, at the expense of your orators and other holders of said preferred stock.

Second. And your orators further show and allege, that in pursuance of chapter 207 of the local laws of said State of Wisconsin of the year 1864, approved March 26th, 1864, entitled "An act to amend the articles of association of the Milwaukee and Prairie du Chien Railway Company," which law was duly approved by the stockholders of said last-named corporation at a meeting of stockholders held in Milwaukee for that purpose on the 6th day of June, 1864, a certificate of such approval being filed in the office of the secretary of state of Wisconsin, in or about the month of June, 1864, the said Milwaukee and Prairie du Chien Railway Company, on or about the 11th day of March, 1865, entered into a certain contract or agreement of lease with the said McGregor Western Railway Company, a copy of which is hereunto annexed, marked "Schedule C," and hereby made part of this, your orators' bill of complaint.

And your orators further show, that at said meeting of said stockholders of the said Milwaukee and Prairie du Chien Railway Company, together with, and as a part approval given to said chapter 207, the following resolution was passed and adopted by the said stockholders as a rule of action, by-law, or instruction for the board of directors of said Milwaukee and Prairie du Chien Company, to wit:

"Resolved, That while we thankfully accept the new powers granted us by the legislature of this State by an act entitled 'An act to amend the articles of association of the Milwaukee and Prairie du Chien Railway Company, approved March 26th, 1864, we reserve to ourselves the exclusive control as to how and when
17 such powers, or any of them, shall be used by the directors, who shall not act on the new powers granted beyond the ordering of surveys, estimates, and plans, until they shall first have obtained the written consent thereto from a majority in interest of

as appears by the same records, paid to said Milwaukee and St. Paul Railway Company the further sum of $42,510, which, together with said 45,000 theretofore loaned, was applied by said railway companies as payment of the dividend, under the resolutions of September 12th, 1866, aforesaid on the common stock of said Milwaukee and Prairie du Chien Railway Company, then held by or in trust for said Milwaukee and St. Paul Railway Company; that said dividend, declared Sept. 12th, 1866, was not published until the month of January, 1867; that the defendants, the Milwaukee and St. Paul Railway Company, and Mitchell, Sage, Gurnee, Cowdrey, and James, did not become owners of said common stock on which they received said dividend until long after the year 1861, and long after the said surplus earnings had been applied, paid, and used by the former board of directors for the benefit of said Milwaukee and Prairie du Chien Railway Company as aforesaid; that a portion of the common stock, amounting to over two hundred and twenty-five thousand dollars, upon which the said dividend was declared, was only issued after the 31st day of March, 1864, in pursuance of an act of the legislature of the State of Wisconsin, approved on that day, entitled "an act to authorize the Milwaukee and Prairie du Chien Railway company to issue stock to aid in adjusting and settling up outstanding farm mortgages, judgments, floating debts, income bonds, and stock of the late Milwaukee and Mississippi Railroad Company;" that on said 12th day of September, 1866, there was due, and since April 1st of that year left unpaid, to the sinking fund in said articles of association mentioned, about eighty-five thousand dollars, which remains yet due and unpaid, whereby the principal sum unpaid on the bonds and mortgage, issued as provided by said articles of association, and to pay which the said sinking fund was provided for in said articles, has become due, to the jeopardy and detriment of the interest of your orators in the bonds and preferred stock of said Milwaukee and Prairie du Chien Railway Company; that in addition to said $85,000 due said sinking fund, said last mentioned corporation, on said 12th day of September, 1866, owed to the Rogers, Locomotive Works about forty thousand dollars, which had then been due and unpaid since the 15th day of June, 1866, and was not paid until the 26th day of October, 1866; and that said directors voting in favor of said recital and resolutions of Sept. 12th, 1866, as aforesaid, knew at that time of the said several amounts then due said sinking fund and said locomotive works, said Nathaniel A. Cowdrey being himself one of the trustees, and the sole acting trustee, to whom said money for the sinking fund was due and payable.

And your orators further show, that they are informed and believe that, at the time when said last-mentioned recital and resolutions were adopted by said defendants, Mitchell, Gurnee, Cowdrey, James, Rudd, and Sage, they knew that the said surplus earnings for the year 1861 had been permanently and not temporarily applied and used by said Milwaukee and Prairie du Chien Railway Company for the payment of the liens subject to which said railroad had been purchased, for the purchase and retirement of preferred stock of

said corporation, and for the permanent and necessary improvement of said railroad hereinbefore more particularly stated; they knew
16 that it was not just, equitable, or legal; that after the said surplus earnings had been so applied, the amount thereof should be divided as they then resolved, and knew that said corporation had not then the ability to pay the said amount thereof; they knew that the said last-named corporation was then indebted as aforesaid, and could not, therefore, legally make a dividend on any stock, and that the capital stock of said company had not been reduced to six millions of dollars, and that seven per cent. of the whole stock had not been earned in one year, and therefore no dividend could lawfully be declared upon the common stock aforesaid. Your orators, therefore, allege that the said recital and resolutions were adopted and carried into effect wrongfully and fraudulently, for the purpose of benefiting the holders of said common stock, and raising the value of the shares of the said Milwaukee and St. Paul Railway Company, which received $87,510 of said dividend, and thereby enriching the said directors, who were largely interested in said last-named company, at the expense of your orators and other holders of said preferred stock.

Second. And your orators further show and allege, that in pursuance of chapter 207 of the local laws of said State of Wisconsin of the year 1864, approved March 26th, 1864, entitled "An act to amend the articles of association of the Milwaukee and Prairie du Chien Railway Company," which law was duly approved by the stockholders of said last-named corporation at a meeting of stockholders held in Milwaukee for that purpose on the 6th day of June, 1864, a certificate of such approval being filed in the office of the secretary of state of Wisconsin, in or about the month of June, 1864, the said Milwaukee and Prairie du Chien Railway Company, on or about the 11th day of March, 1865, entered into a certain contract or agreement of lease with the said McGregor Western Railway Company, a copy of which is hereunto annexed, marked "Schedule C," and hereby made part of this, your orators' bill of complaint.

And your orators further show, that at said meeting of said stockholders of the said Milwaukee and Prairie du Chien Railway Company, together with, and as a part approval given to said chapter 207, the following resolution was passed and adopted by the said stockholders as a rule of action, by-law, or instruction for the board of directors of said Milwaukee and Prairie du Chien Company, to wit:

"Resolved, That while we thankfully accept the new powers granted us by the legislature of this State by an act entitled 'An act to amend the articles of association of the Milwaukee and Prairie du Chien Railway Company, approved March 26th, 1864, we
17 reserve to ourselves the exclusive control as to how and when such powers, or any of them, shall be used by the directors, who shall not act on the new powers granted beyond the ordering of surveys, estimates, and plans, until they shall first have obtained the written consent thereto from a majority in interest of

each class of stockholders, and submitted to us the approximate estimates, and the ways and means for doing the same."

That, in pursuance of said last-mentioned resolution, the said contract of lease was submitted to the stockholders of said Milwaukee and Prairie du Chien Railway Company, and the written consent of a majority in interest of each class of said stockholders of said last-mentioned corporation was obtained thereto, with the authority, condition, and limitation in said consent expressed that five hundred thousand dollars of the stock of said last-mentioned corporation, either preferred or common, at not less than par for cash, might be issued by the board of directors for the purpose of meeting the requirements of said contract of lease; that afterwards, on or about the first day of April, 1865, said Milwaukee and Prairie du Chien Railway Company took possession of that part of said railroad of said McGregor Western Railway Company, which then was in condition to be operated, being about thirty-five miles, the bondholders of the said McGregor Western Railway Company to the amount of $850,000 and more having previously given their written assent to said contract of lease, as required by the first and seventeenth articles thereof; that the said McGregor Western Railway Company afterwards, on the first day of August, 1865, gave possession of its entire property and road, finished and unfinished, to the said Milwaukee and Prairie du Chien Railway Company under said contract of lease; that said railroad of said McGregor Western Railway Company was not then completed and finished in accordance with the contract for the construction thereof theretofore made by the said McGregor Western Railway Company with the Iowa Railroad Construction Company in said contract of lease referred to; that said Milwaukee and Prairie du Chien Railway Company thereupon, and by said contract of lease, became and was entitled to complete and finish the said railroad of said McGregor Western Railway Company on the terms, in the manner, and on the conditions for that purpose in said contract of lease contained; that at the time of the delivery under said contract of lease of the said first sixty miles of said railroad of said McGregor Western Railway Company to the said Milwaukee and Prairie du Chien Railway Company, as aforesaid, the railroad so delivered was not in the condition required by the said contract for the construction thereof in said contract of lease mentioned, nor had the first thirteen miles of said railroad so delivered then been
18 relaid with rails as in said contract of lease required and specified; that the said McGregor Western Railway Company did not, within one month after said incomplete and inferior condition had been ascertained in the manner in said contract of lease prescribed, furnish the cash means necessary to put said railroad so delivered in proper condition, or to relay said first thirteen miles; that thereupon, said Milwaukee and Prairie du Chien Railway Company had the right, and did exercise its option, to execute the work required to be done as aforesaid, and to make advances for that purposes, as in said contract of lease specified, authorized, and provided; that the advances so made to the McGregor Western Railway Com-

pany by said Milwaukee and Prairie du Chien Railway Company, in the execution of said work of completing and finishing said railroad of said McGregor Western Railway Company, up to the 15th day of June, 1866, the day of the election of said new board of directors of said Milwaukee and Prairie du Chien Railway Company, amounted to about three hundred and sixty thousand dollars, ($360,000;) that up to that time said advances had been approved by the said McGregor Western Railway Company, in the manner agreed upon by the said two corporations, the president of the said McGregor Company, who was also its official auditor, appointed as provided in said contract of lease, examining and approving each month the vouchers for such advances, and also a monthly and yearly balance sheet of the same.

And your orators further say, that on an examination of the books and records of said Milwaukee and Prairie du Chien Railway Company, it appears, and they therefore allege the fact to be, that since said 15th day of June, 1866, the said new board of directors of said Milwaukee and Prairie du Chien Railway Company, (being then wholly under the control and management of defendants, Mitchell, Gurnee, Cowdrey, Crocker, Merrill, Sage, James, and Rudd,) and up to about the time of the pretended purchase said McGregor Western Railway Company, hereinafter mentioned, they increased said advances to said McGregor Western Railway Company under said contract of lease to about the sum of six hundred and forty-seven thousand dollars, ($647,000,) that being about $147,000 more than they were authorized to advance under the power conferred upon them by the stockholders, as hereinbefore mentioned.

Third. Your orators further show, that because of the large advances made as aforesaid, and for other reasons hereinafter set forth, it has always been highly inexpedient to purchase the said McGregor Western Railway under the option contained in said lease
19 contract, and the former directors and stockholders of the said Prairie du Chien Railway Company have not favored such purchase, as is to said present directors well known. Nevertheless, it appears from the records of the last-named company, and your orators therefore allege, that on the twentieth day of September, 1866, at a meeting of said new board of directors, at which said defendants, Mitchell, Gurnee, Cowdrey, James, Rudd, and Sage were present, a certain further recital and resolution were unanimously adopted, of which a copy is hereto annexed and made part of this bill of complaint, marked "Schedule D."

And your orators further show, that they are informed and believe, and therefore allege, that afterwards, and without any authority of the stockholders of said Milwaukee and Prairie du Chien Railway Company, but in violation of the restriction theretofore imposed upon them, and of the instructions of the stockholders, hereinbefore stated, the said new board of directors did willfully and corruptly, and to the injury of your orators and other stockholders of said Milwaukee and Prairie du Chien Railway Company, undertake to carry into effect the said last mentioned resolution, and did issue or cause

to be issued the said several amounts of preferred and common stock for the purposes in said last mentioned resolution specified.

And your orators further show, that they are informed and believe, and therefore allege, that prior to the adoption of said last mentioned resolution, the said defendants, Mitchell, Cowdrey, James, Rudd, Sage, and Gurnee, and their confederates, to your orators unknown, obtained control of the affairs of said McGregor Western Railway Company, and by electing or causing to be elected the said Cowdrey, James, Mitchell, and other persons friendly to their schemes, as directors of said last mentioned corporation; that thereupon they caused to be made the assertion and alleged claim in said last-mentioned recital and resolution stated, that a large proportion of the said advances to said McGregor Western Railway Company was unauthorized, and therefore not secured as contemplated under said contract of lease; that such claim or assertion was, however, never made by nor known to the president of said McGregor Western Railway Company, he not being engaged in said conspiracy; that such alleged claim and assertion was untrue in fact and known so to be to the persons making the same, and also to those adopting the said last mentioned recital and resolutions of September 20th, 1866, and was a mere sham, and a pretext for said last-mentioned resolution, the vice president of said McGregor Western Railway Company being the said Cowdrey; that in June, 1866, when the said new directors came into control of the said Milwaukee and Prairie du Chien Railway Company, the mortgage bonds of the said McGregor Western Railway Company, in said contract of lease mentioned, were worth in the market about sixty per cent. of their par value, and the stocks of said last mentioned corporation, in said contract of lease mentioned, were worth about twenty per cent. of their par value, while the second preferred stocks of said Milwaukee and Prairie du Chien Railway Company were then worth about ninety per cent. of their par vaiue, and the common stocks of said last mentioned corporation were then worth about seventy to eighty per cent. of their par value; that up to the time, or up to about the time of the passage of said last-mentioned resolution, said bonds of said McGregor Western Railway Company continued to remain worth much less than the said second preferred stocks of said Milwaukee and Prairie du Chien Railwaay Company, and the said stocks of said McGregor Western Railway Company continued to remain worth much less than one half of the market value of said common stock of said Milwaukee and Prairie du Chien Railway Company; that the action of the directors set forth in said "schedule D" was kept secret by said directors, and they were thus enabled to buy the said McGregor Western stocks and bonds at the low rates aforesaid and exchange them under the terms of the said resolution for the more valuable stocks of the Prairie du Chien Company, a large portion of the latter being set apart for that purpose; that the said Mitchell, Gurnee, Cowdrey, James, Crocker, Rudd, Sage, Merrill and Stimson, or some one or more of them purchased or acquired the ownership or control of the majority, or of a large portion of the said stocks and bonds of the

McGregor Western Railway Company, and did in fact exchange them or caused them to be exchanged for the said stocks of the Milwaukee and Prairie du Chien Railway Company, making thereby immense profits, at the expense of the last named corporation; but to what amounts, or in whose name, or for whose precise benefit, your orators are unable to say.

Your orators further show, that while by the terms of the said lease contract the first sixty miles of said McGregor Western road, with the other property specified as appertaining thereto, was to cost only one million eighty thousand dollars in second preferred stock, and six hundred sixty thousand dollars in common stock of the said Milwaukee and Prairie du Chien Company, the said present directors by said last resolution have directed to be issued for that purpose one million one hundred twenty-five thousand dollars in said second preferred stock, and seven hundred sixty thousand
21 dollars in said common stock.

Your orators further show, that according to the terms of said contract of lease, the said McGregor Western Railroad was to be completed to the extent of sixty miles, and to be equipped with proper buildings, shops, machinery and tools (except rolling stock) necessary for operating the same, all which were to be supplied at the expense of the said McGregor Western Railway Company; but these were not constructed and furnised, except to a very limited extent, and on account of the purchase by the said Milwaukee and Prairie du Chien Company, all the expense thereof, and of completing the said sixty miles, must now be paid by the latter company without any expectation of reimbursement.

And your orators further show, and aver, that by the said purchase of said railroad of said McGregor Western Railway Company under said last mentioned resolution, said new board of directors of said Milwaukee and Prairie du Chien Railway Company have in reality, while pretending thereby to save the said claim for advances made to said McGregor Western Railway Company, made the same utterly worthless and thrown it away, and have thus, corruptly, and intentionally, as your orators believe and allege, caused the said Milwaukee and Prairie du Chien Railway Company, and its stockholders, to suffer a loss of about six hundred and forty-seven thousand dollars for the benefit and advantage of said McGregor Western Railway Company, in whose bonds and stocks said Mitchell, Cowdrey, Gurnee, Crocker, Merrill, James, Rudd, Sage, and Stimson, or most, or some of them, then were or soon became largely interested, as your orators are informed, believe and allege.

And your orators further show, that the issue of the said stock in said last mentioned resolution specified, had not and has not been authorized by said stockholders of said Milwaukee and Prairie du Chien Railway Company, but was and is contrary to their express instruction; that said issue was made by said new board of directors of said last named corporation in violation of the trust committed to them, and, as your orators are informed, believe and allege, for the fraudulent and corrupt purpose of enriching themselves at the cost and

expense of the other stockholders of said Milwaukee and Prairie du Chien Railway Company, and is still mainly held, owned or controlled by the said Mitchell, Gurnee, Crocker, Sage, Cowdrey, James, Rudd, Stimson, and Merrill, or some one or more of them, or by some other person or corporation, for their benefit or for the benefit of some one or more of them, or by, or for the defendant, the Milwaukee and St. Paul Railway Company.

22 Fourth. And your orators further show, that it appears from the books, papers, and records of said Milwaukee and Prairie du Chien Railway Company, that its said new board of directors, in violation of the said contract of lease, in addition to the exchange of said bonds of said McGregor Western Railway Company for second preferred stocks of said Milwaukee and Prairie du Chien Railway Company as aforesaid, have paid out of the funds of said last mentioned corporation the sum of seventy-seven thousand dollars, or more, in first preferred stock of said last mentioned corporation for coupons of said last mentioned bonds so exchanged, overdue at the time of such exchange; and your orators are informed, believe and allege, that a portion, if not all of said coupons, when they were so paid, were held, owned, or controlled by said Mitchell, Gurnee, Cowdrey, Sage, Crocker, James, Rudd, Stimson, and Merrill, or some one or more of them, or by some other persons or corporation, for their benefit, or the benefit of some one or more of them, and that said payment of said coupons was corruptly and fraudulently made by said new board of directors.

And your orators further show, that the preferred stock exchanged by said directors as aforesaid, also bears interest (by being entitled to dividends) from the first day of January, A. D. 1866, and as your orators are informed and believe, such interest or dividend has since been paid thereon, the dividend upon the said preferred stock being paid to the said Milwaukee and St. Paul Railway Company, and to the other holders thereof.

Fifth. Your orators further say, that they are advised and believe, and allege that the increase of capital stock of said Milwaukee and Prairie du Chien Railway Company, to the amount of one million dollars, in and by the said last mentioned resolution of September 20th, 1866, set apart for the purchase or exchange of the stock of the Minnesota Central Railway Company, was without any authority or color of authority of law, and was by said resolution provided for as a means of further fraudulently enriching the persons voting for said last mentioned resolution, and their confederates, at the expense and injury of the stockholders of said Milwaukee and Prairie du Chien Railway Company, that said members of the new board of directors of said Milwaukee and Prairie du Chien Railway Company, at the time of the passage of said last named resolution, owned and controlled, or a majority or some of them then owned and controlled, or were largely interested in the property and stock of said Minnesota Central Railway Company, and some of them were then officers and directors of said last mentioned corporation, and that said last mentioned million dollars of stock has actually been issued and

23 used or a very large large part thereof has been issued and used as in said resolution proposed, thereby further enriching said members of said new board of directors at the expense and injury of the stockholders of said Milwaukee and Prairie du Chien Railway Company.

Sixth. And your orator further show, that they are informed, believe. and allege, that prior to said 20th day of September, 1866, the said defendants, Mitchell, Cowdry, James, Gurnee, Crocker, Merrill, Stimson, Rudd and Sage, or some two or more of them, either alone or with other persons to your orators unknown, further combining and confederating together, obtained the control and management of the affairs of, and became largely interested in the said Iowa and Minnesota Railway and Construction Company; that before the 20th day of September, 1866, the defendants, Sage, Gurnee, James, Cowdrey, and Mitchell, became, and since then continued to be, and now are, directors and part owners of said last-named corporation, said Sage being the President thereof; that said last mentioned defendants and their confederates have since then controlled and now control the last-mentioned corporation; that, as appears from the records of said Milwaukee and Prairie du Chien Railway Company, on the 20th day of September, 1866, at said meeting of said board of directors of said last mentioned corporation, the defendants, Mitchell, Gurnee, Cowdry, James, Rudd, and Sage, unanimously adopted a certain other recital and resolution, a copy of which is hereunto annexed, and made part of this bill of complaint, marked "schedule E"; that said contract in said last-named resolution, mentioned has since then been executed and delivered; that said defendants, Mitchell, Gurnee, James, Cowdrey, Sage, and others of the directors of the said Milwaukee and Prairie du Chien Railway Company, or some one or more of them, are largely interested in said last-mentioned contract on the side of said Iowa and Minnesota Railway and Construction Company by being directors or stockholders, or both, in said last-mentioned corporation; that the distance of railroad to be built under said last-mentioned resolution is about eighty-three and not eighty-five miles; that therefore the cost of said railroad under said contract will be about $24,096 per mile in the bonds, and $24.096 in the stocks of said McGregor Weston Railway Company, while under the provisions of said contract of lease hereinbefore mentioned, the same railroad, as an extension of said railroad of said McGregor Weston Railway Company, to the Iowa State line, being about thirty-eight miles, was only to cost $15,000 per mile in bonds and $22,000 per mile in stocks of said McGregor Weston Railway Company, and by

24 converting said bonds and stocks under said last-named contract, said railroad to be constructed by virtue thereof will cost in bonds and stocks of said Milwaukee and Prairie du Chien Railway Company about $10,144 per mile more than said cost was provided for in said contract of lease; that said price in said contract with said Iowa and Minnesota Railway and Construction Company is exorbitant.

And your orator further show, that the price fixed in said contract

of lease for the said extension beyond sixty miles, including the cost of shops, tools, station, building, turn-tables, and other necessary fixtures and equipments complete, except rolling stock; that of the line of road proposed to be built by the said Iowa and Minnesota Railway and Construction Company, the portion between Austin and Owatonna, about thirty-five miles, and being nearly all of that which lies in the State of Minnesota, had been already graded before such proposal was made, and the cost of construction thereof should for that reason have been greatly diminished; that the whole road so proposed to be built could have been built for about one half of the amount required by the said proposal; that at the time of accepting the said proposal, a responsible contractor stood ready to build the same for fifteen thousand dollars per mile in cash, or the whole for $1,245,000, while the cash market value of the stocks of the Prairie du Chien Railway Company agreed to be delivered for the same work according to the said proposal, was about $2,500,000; and the whole line so proposed to be built could also have been procured to be built for $26,000 per mile in stocks, according to the prices and terms specified in said lease contract for that portion lying in the State of Iowa, all of which was known to some or all of the said directors voting to accept said proposal: that the buildings agreed as aforesaid to be built by the said Iowa and Minnesota Railway and Construction Company will be totally insufficient for the business of the road, and large additional expenses must be incurred in order to make up the deficiencies; that besides this difference in terms, disadvantageous to the Milwaukee and Prairie du Chien Company, there are many others, among which are the donation by the latter, of all land grants, the furnishing of right of way, frogs, switches, transportation of men and material, and the making of a mortgage of two million dollars, which would practically have priority over all the preferred stock, in place of an issue of one million two hundred and forty-five thousand dollars in second preferred stock as aforesaid.

25 And your orators further say, that they are advised, and therefore allege, that the directors of the said Milwaukee and Prairie du Chien Railway Company were not authorized by law to make said last-named contract, or to make the increase of capital stock in said last-mentioned resolution specified, and your orators believe and allege that said last-mentioned contract was made by said directors of the Milwaukee and Prairie du Chien Railway Company for the further fraudulent and corrupt purpose of enriching themselves and their confederates, at the expense and to the injury of the stockholders of said last-mentioned corporation.

Seventh. And your orators further show, that it appears from the records of said Milwaukee and Prairie du Chien Railway Company, and they therefore allege the fact to be, that said new board of directors of said Milwaukee and Prairie du Chien Railway Company have encumbered the property of said last-mentioned corporation by a so-called floating debt of about $500,000; have for more than six months neglected and failed to pay certain amounts due the sinking fund aforesaid, there being now $177,000 due the same; have by re-

solution, adopted on or about the 26th day of December, 1866, authorized their president or vice-president to borrow money for the use of said last-named corporation, and to give its obligation therefor to an amount not exceeding $250,000; have used the funds of the Milwaukee and Prairie du Chien Railway Company to the amount of about one hundred and sixty thousand dollars in paying coupons, some of which were not yet due, upon bonds issued by the said Minnesota Central Railway Company, and for payment of duties upon railroad iron belonging to the last-named corporation, which were in no wise debts or charges against the said Milwaukee and Prairie du Chien Railway Company; have, on or about the 19th day of December, 1866, declared and afterwards paid a dividend on the preferred stock of the said Milwaukee and Prairie du Chien Railway Company, while the earnings out of which said dividend was so declared were necessary for operating the railroad of said last-named corporation; all of which said last-mentioned acts and omissions of said new board of directors were and are in violation of their duties, and gross abuses of their trust as such directors under the several laws, articles of association, and instructions hereinbefore mentioned and referred to, and were and are to the great detriment and injury of your orators and other stockholders of said Milwaukee and Prairie du Chien Railway Company.

And your orators further show, that they are informed and believe that the said Milwaukee and St. Paul Railway Company, one
26 of the defendants in this bill of complaint, is a corporation created by the laws of said State of Wisconsin; that its principal railroad runs from Milwaukee to La Crosse, in said last-mentioned State, and is a rival road to said railroad of said Milwaukee and Prairie du Chien Railway Company; that it has been and is largely owned, and is controlled by the said defendants, Mitchell, Gurnee, Cowdrey, James, Sage, Crocker, Merrill, Rudd, and Stimpson, or most or several of them; that most of them for a long time have been and now are directors of said Milwaukee and St. Paul Railway Company; that said defendant, Alexander Mitchell, for a long time has been and is its president; that the said defendants, Mitchell, Gurnee, Cowdrey, James, Sage, Crocker, Merrill, Rudd, and Stimpson, and the said Milwaukee and St. Paul Railway Company, own or control a majority of all the stock of said Milwaukee and Prairie du Chien Railway Company; that they own or control such majority by holding and controlling nearly all the common stock of said last-mentioned company, and especially by means of the said stock so as aforesaid fraudulently and illegally issued under the said resolutions of September 20th, 1866; that they have fraudulently made and are continually making the interests of said Milwaukee and Prairie du Chien Railway Company, especially of its said preferred stock, subservient to their own interest, and to the interests of said Milwaukee and St. Paul Railway Company, without regard to and in violation of the laws of said State of Wisconsin, the by-laws of said Milwaukee and Prairie du Chien Railway Company, and the resolutions and instructions of its stockholders, as hereinbefore more particularly stated, and that all their said acts and doings hereinbefore more particularly

complained of, have been done and suffered by them fraudulently, illegally, and for the purpose of enriching themselves at the cost, expense, and injury of your orators and other stockholders of preferred stock of said Milwaukee and Prairie du Chien Railway Company.

And your orators further show, that they are informed and believe that the said new board of directors of said Milwaukee and Prairie du Chien Railway Company, in violation of their said trust, and for the fraudulent purpose of further injuring your orators, and other holders of preferred stock in said last-mentioned corporation, and in order to cover up their said acts of malfeasance, fraud, and breaches of trust hereinbefore mentioned, through their said president, and other agents, have sought and are still seeking legislation from the said State of Wisconsin, to enable them, with the aid of said illegal and fraudulent stock issued under said resolution of Sept. 20th, 1866, to effect, by a vote of a majority of all the stock of said Milwaukee and Prairie du Chien Railway Company, a consolidation of said last-named
27 corporation with said Milwaukee and St. Paul Railway Company, and thereby a dissolution of said Milwaukee and Prairie du Chien Railway Company, and to secure an apparent and pretended ratification of their said illegal and corrupt acts and omissions; and that said new board of directors have sought and are seeking further and other legislation from said State of Wisconsin against the interest of your orators and other stockholers of said last-mentioned corporation.

And your orators further show, that in consequence of the said unlawful acts of the said present directors, the Milwaukee and Prairie du Chien Company has become greatly embarrassed, its credit impaired, and its shares depreciated and unsaleable; that the shares of stock of the said Milwaukee and St. Paul Railway Company are and have been much lower in market value than those of the former company, advanced in price upon rumors of an intended consolidation of the said two companies.

And your orators further say, that they are informed and believe that the said several illegal, unauthorized, and fraudulent acts and doings of said new directors of said Milwaukee and Prairie du Chien Railway Company were by them as much as possible kept secret from the knowledge of those stockholders of said last-named corporation and other persons not confederating with them; that their said resolution of September 12th, 1866, was never published by them, and the said resolution relating to their said purchase of said McGregor Western Railway Company was not known to the president thereof until about the 26th day of February, 1867, when he was informed thereof by one of the committee hereinafter mentioned; that a meeting of said stockholders of said Milwaukee and Prairie du Chien Railway Company, held on or about the 6th day of February, 1867, a committee of investigation was appointed by said stockholders to examine into the acts and doings of said new board of directors; that neither your orators, nor others of said stockholders, except those in collusion with said directors, were informed or knew of the said sev-

eral acts of fraud, collusion, illegality, and breach of trust of said directors, until they were very recently informed of the same by the said committee of investigation; that the said Alexander Mitchell, as president of said board of directors, fearing the consequences of a further examination of the books, papers, and records of said Milwaukee and Prairie du Chien Railway Company by said committee, and in order to prevent your orators and other, from ascertaining or knowing the acts or doings of said new board of directors, has recently, on or about the eighteenth day of March, 1867, refused to said committee further access to the books, records, or papers of said last-mentioned corporation.

28 And your orators further show, that the holders of about one million of bonds of the said McGregor Western Railway Company, have given their assent to said contract of lease according to article 17th of the same, notice of which said assent is duly stamped on said last-mentioned bonds, and that as your orators are informed and believe, there is no other incumbrance on said McGregor Western Railroad except the advances of said Milwaukee Railroad Company hereinbefore mentioned; that, as your orators are informed and believe, said defendants, Mitchell, Gurnee, Cowdrey, James, Sage, Rudd, and Stimson, or a majority, or some of them, and their confederates, on the said 20th day of September, 1866, were the owners or holders of, or largely interested in the two million of Minnesota Central Railway mortgage bonds referred to in said proposition of the Iowa and Minnesota Railway and Construction Company, contained in Schedule E aforesaid, which bonds were scantily secured by said mortgage, and that one object of the making and acceptance of said proposition, as aforesaid, was to increase said security and the value of last-mentioned bonds.

And your orators further allege, on information and belief, that the corporations defendant, which were engaged in or benefited by the several wrongful transactions aforesaid of the present directors of the Milwaukee and Prairie du Chien Railway Company, had notice at the time thereof of the illegal and fraudulent character thereof, and of the facts hereinbefore stated affecting the same, and were knowing and willful parties thereto.

And your orators further allege, that the property of said Milwaukee and Prairie du Chien Railway Company is not safe in the hands of said present board of directors thereof; and your orators fear and allege, that unless the said present directors shall be removed from the control of the said corporation, and the same entrusted to other and proper persons, the property of said company will be wasted, its credit ruined, the means and power of the corporation diverted to purposes foreign to the legitimate objects thereof, and the lawful interests of your orators and other honest shareholders of common, as well as of preferred stock, further impaired or wholly destroyed; and that, unless a writ of injunction is granted, as hereinafter prayed, the defendants, Mitchell, Gurnee, Cowdry, James, Crocker, Merrill, Rudd, Sage, and Stimson, and their confederates, will use the said illegal and fraudulent stock so issued as aforesaid under said resolu-

tions of Sept. 20th, 1866, and will issue other stock, for the purpose of keeping themselves in office and in control of the affairs of
29 said Milwaukee and Prairie du Chien Railway Company, and will continue further to squander the means, and mismanage the affairs of said last-mentioned corporation, will seek to destroy its existence, and will continue to sacrifice and injure the interests of your orators and other holders of said preferred stock therein, for the fraudulent purpose of enriching themselves and their said confederates.

And your orators further show, that they cannot make the said Milwaukee and Prairie du Chien Railway Company party plaintiff in this or any other action against its said directors for the purpose of obtaining relief against the said wrongful acts of said directors, because the government and direction of affairs of said last-mentioned corporation are, by the said articles of association, under the control of its board of directors.

And your orators further show, that there are very numerous stockholders in the said Milwaukee and Prairie du Chien Railway Company, whose names and residence are unknown to your orators, holding both common and preferred stock; and there are many such holders of preferred stock who could not be joined as plaintiffs herein, without defeating the jurisdiction of this court; that other persons than your orators, holders of said preferred stock to the amount of one million one hundred thousand dollars, citizens of the States of Wisconsin and New York, have been made acquainted with the general scope and objects of this suit, and have requested that the same should be instituted and carried on, but have declined to join as coplaintiffs therein. Your orators pray that such persons may, with their assent, and upon their proper application, be made parties defendent hereto.

Your orators say, on information and belief, that the said Russel Sage, Nathan A. Cowdrey, Walter S. Gurnee, Frederick P. James, Joseph Rudd, Henry C. Stimson, the McGregor Western Railway Company, the Minnesota Central Railway Company, and the Iowa and Minnesota Railway and Construction Company are not, at the time of filing this bill of complaint, within the State of Wisconsin, but are without the jurisdiction of this court.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, (except the several corporations defendants, which are to answer under their corporate seals,) and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer; that is to say:

30 1. Whether the said Milwaukee and Prarie du Chien Railway Company was organized and incorporated as hereinbefore stated, and whether the articles of association were executed, and

the several acts of the legislature enacted affecting the said company as herein above stated.

2. Who were, at the time of filing this bill of complaint, president, vice-president, and directors of the said several corporations, and how long have each of such officers held such office?

3. How much stock, and what amount of bonds or other evidences of debt issued by each of said corporatiens, was, at the time of filing this bill complaint, or at any since the first day of June, A. D. 1866, held, owned, or controlled by each of the defendants named in this bill, or held in trust for each of said defendants, or for his or its benefit? When was such stock, or things in action acquired; how, from whom, upon what consideration; how much, if any, has been parted with, or transferred since the first day of June last, and to whom; when, and for what purpose, and on what consideration; and who now holds the same? State fully and particularly.

4. Whether the directors of said Milwaukee and Prairie du Chien Railway Company, at a meeting held on or about September 12th, 1866, adopted the recital and resolutions, as hereinbefore stated, and as forth in said Schedule B?

5. Whether the dividend declared by the said last-named resolution was paid, and by whom, and to what amount, and what amount thereof was paid to any of the defendants, or upon stock held, owned, or controlled by them, or any of them, or held in trust for them, or any of them? State particularly, specifying the amount of each payment to, and for each defendant.

6. When were such payments severally made? When and how was public notice of such dividend first given? When and to whom were the proceedings of the meeting last mentioned made known before such public notice was given?

7. What indebtedness, besides that secured by mortgage, did the last-named corporation owe at the time of declaring the said dividend, and to whom? How much cash did the said company then have actually on hand? How much was then in arrear to the sinking fund aforesaid, and how much is now in arrear thereto? How much were the net earnings of said company, during each of the years 1862, 1863, 1864, 1865, and 1866, and what amount of dividends, and upon what stock, were declared in each of those years?

8. Whether any, and how much, of the common stock of the company last-named was issued after the year 1861, and how much
31 of the dividend aforesaid was paid thereon? When was the common stock of said company, upon which a dividend was received by the said Milwaukee and St. Paul Railway Company, acquired by or for the said last-named company?

9. What is the amount of each class of capital stock of the Milwaukee and Prairie du Chien Company at the time of filing of this bill of complaint, and how much of each class has been created, and how much issued since June, 1866?

10. Whether the resolution above stated to have been adopted at the meeting of stockholders, June 6, 1864, was so adopted; whether the act therein referred to conferred the right to lease and to pur-

chase the property of the McGregor Western Railway Company; whether written authority was given by the stockholders to execute the contract of lease above mentioned, with the restriction and limitation above stated?

11. Whether the said contract of lease was made as above set forth, and whether possession was taken under the same as above stated, and whether the property so leased was unfinished at that time as above stated, and whether advances were made up to June, 1866, as above stated, pursuant to such lease contract, and the vouchers and accounts therefor audited as aforesaid?

12. What amount of advances in cash, or property, had been made by the said Milwaukee and Prairie du Chien Railway Company to the said McGregor Western Railway Company, at the time of filing this bill of complaint, and on what account, and under what authority have such advances been made since the fifteenth day of June 1866?

13. Whether the meeting of directors was held, and the recital and resolutions set forth in schedule D, above mentioned, were adopted on or about the time herein above stated?

14. Whether the said proceedings have ever been communicated by the said directors to the stockholders of the said Milwaukee and Prairie du Chien Company; and if so, when, how, and to whom? What notice thereof was ever given to the said McGregor Western Railway Company, if any?

15. Whether the stock created under or by said resolution, in schedule D, or how much thereof, has been issued, and how much of each class, and when and to whom was the same delivered, and by whom, and upon what consideration, and how much thereof was received by any of the defendants herein, or by any person or corporation in trust or for the benefit of any of said defendants? What and how much interest did any of the defendants have in the stock or bonds issued by the said McGregor Western Railway Company, at or after the time of the passage of the last-mentioned resolution?

32 16. Whether first preferred stock was issued and delivered or money payed in payment of over-due interest coupons on bonds issued by the McGregor Western Railway Company as hereinabove stated, and how much of each?

17. To what persons and corporations was such stock issued and delivered, and money paid, and how much to each? For whose benefit was it secured, and what has become of the same? If such stock has been sold or transferred, who has received the proceeds thereof, and by whom and to whom were such sales and transfers made? What amount of interest had the defendants, directors as aforesaid, or the said Milwaukee and St. Paul Railway Company, in such bonds or coupons at the time of such issue of stock, or after that time, or at any time previously thereto, and since the first day of June, 1866?

18. Whether, since the issue of the preferred stock mentioned in schedule D aforesaid, dividends have been declared and paid on all or any part thereof; and if so, upon how much of such stock, and of

which class? How much of such dividends have any and which of the defendents received or had an interest in?

19. Whether any of the stock mentioned in the last named resolution as set apart to take up the stock of the Minnesota Central Railway Company has been delivered or issued; and if yea, then how much, by whom, to whom, for whose benefit; to whom has the same been transferred; who now holds the same; what consideration has has been received therefor by the said Milwaukee and Prairie du Chien Railway Company? What interest have the defendants, or any of them, in any of the stock so issued, or have they, or any of them, at any time had therein, or in the stock of the said Minnesota Central Railway Company?

20. Whether the said defendants, or some of them, were not, on the 20th day of September, 1866, the owners or holders of, or interested in, the two millions of Minnesota Central Railway mortgage bonds in schedule E mentioned, or some of them? State fully who were the owners or holders of said last-mentioned bonds on said 20th day of September, 1866, and how many of them were held or owned by the defendants or some of them; or to what extent or amount were the defendants, or some one or more of them, then interested in said bonds?

21. Who have been the directors, the president and vice-president of the defendants, the Minnesota Central Railway Company, and the Iowa and Minnesota Railway and Construction Company,
33 since the first day of June, 1866, and during what portion of that period has each held such office?

22. Whether the recital and resolution copied in said Schedule E. was adopted as hereinbefore set forth? Who made and signed and submitted the proposition of the Iowa and Minnesota Railway and Construction Company set forth in said resolution? When and where was it presented to the said directors?

23. Who were at the time of submitting the said proposition, and who have since been directors or stockholders or owners of said last named company? Who have controlled and managed the same? What share, interest, (legal or equitable,) ownership, control, or management have the defendants, or any them, or have they, or any of them, had in said last named company, and what connection therewith or relations thereto, since the first day of June, A. D. 1866?

24. Whether there was previously to the execution of the said lease contract, a contract made between the said McGregor Western Railway Company and the Iowa Railroad Construction Company, as recited in said lease contract? Is such contract or a copy thereof, in the possession or control of any of the defendants? If yea, such defendant is required to produce, with his answer as a part thereof, a copy of such contract.

25. What contract or contracts have been made between the said Milwaukee and Prairie du Chien Railway Company, or any one on its behalf, and the said Iowa and Minnesota Railway and Construction Company, or any one on its behalf? Set forth a copy of every such contract or contracts, if in writing.

26. Whether any stock, bonds, cash, securities or other property or means of the said Milwaukee and Prairie du Chien Railway Company have, since the date of the said proposal, been paid, issued or delivered to the said Iowa and Minnesota Railway and Construction Company, or in pursuance of the terms of said proposal or contract based thereon? If yea, then state how much, at what date or dates, what amounts, and the exact nature of each payment, issue or delivery, who received such amount, and for whose benefit it was received, and to whom did the proceeds go. Did the said Iowa and Minnesota Railway and Construction Company sub-let the work to be done by that company under said contract last named, or any part, to whom, and on what prices, terms, and conditions? If the contract or contracts of sub-letting are in writing, annex a copy thereof to the answer.

27. Whether the said Milwaukee and Prairie du Chien Railway Company, at the time of filing this bill of complaint, is
34 indebted to any amount beyond the amount of scrip stock described in Schedule A? If so, what is the amount of such indebtedness; to what persons or corporation is it owing; when and for what purpose, in general, was it contracted; how much is due, and when does the remainder fall due? Under what contracts, laws, and other authority, do the directors of the last named company claim that the same was incurred?

28. How much is due to the sinking fund under the said articles of association? And since what date has the whole or any part thereof been due?

29. What contract or contracts have been made with the said Minnesota Central Railway Company by the said Milwaukee and Prairie du Chien Railway Company, or any of its directors? Set forth a copy of any such contract or contracts, if in writing. What money, stocks, securities, evidences of dept, or property of the last named company have been paid, issued, transferred, or delivered to the said Minnesota Central Railway Company, or to any person for that company, or to pay any debt or charges against that company, or for the benefit of that company? By what authority was such payment, issue, transfer, or delivery made; by whom was it made; to what person or persons; at what date or dates, and on what account? State fully the facts as to each payment, issue, transfer, or delivery, including the amount of each.

30. Whether a dividend on the preferred stock of the said Milwaukee and Prairie du Chien Railway Company for the year 1866, was in December, 1866, by the said directors thereof, ordered to be paid? If yea, what were the rates and the total amount thereof, and when was the same payable? Upon what portions and shares of the stock created or issued as aforesaid, since the month of August, 1866, was such dividend paid or payable? State definitely, distinguishing between the two classes of preferred stock, and between the stock created at different dates and for different purposes, as set forth in the resolution above mentioned.

31. How much of the said dividend on said stock, issued or created

since August, 1866, was paid to any of the defendants, or to any person or corporation in trust for or for the benefit, wholly or partially, of any of the defendants, and of which defendant or defendants?

32. Whether, on or about the 26th day of December, 1866, the said board of directors of said Milwaukee and Prairie du Chien Railway Company did by resolution authorize its president or vice president to borrow money for the uses of said corporation and to give its obligation therefor to an amount not exceeding
35 $250,000, to be paid during the year 1867; what directors were present at the time of the passage of such resolution, and did any of them vote against the same; and how much money has been borrowed by virtue of such resolution, at what time or times, and of whom? How much is now owing on any such loan or loans, and to whom?

And that the said resolutions set forth in said schedules B, D, and E, and also the resolution authorizing the borrowing of money, may be annulled and declared fraudulent and void; that the said purchase of the property of the McGregor Western Railway Company may be also set aside and declared fraudulent and void, and the rights and situation of each party to the said contract of lease be fully restored, as defined in said contract of lease, as if such option of purchase had never been exercised; that any purchase of the stock or of the property of the Minnesota Central Railway Company by the said Milwaukee and Prairie du Chien Railway Company may be set aside and declared fraudulent and void; that the said contract with the Iowa and Minnesota Railway and Construction Company be set aside and adjudged fraudulent and void; that all the stock of the said Milwaukee and Prairie du Chien Railway Company issued under or in pursuance of any of the said resolutions of the said present board of directors may be cancelled, and adjudged fraudulent and void; that the said corporations defendant, other than the said Milwaukee and Prairie du Chien Railway Company, be decreed to repay and redeliver to the last named company any and all moneys, stocks, bonds, and other property received by them under or in pursuance of the said resolution or contracts, or any of them; that the defendants, the Milwaukee and Prairie du Chien Railway Company, and all directors, and other officers, agents, or servants of the same, be perpetually restrained by an injunction to be issued by this court from paying any interest or dividends upon any of the stock so issued, and from receiving or counting any votes tendered on account of the same, and from recognizing or treating in any manner the said stock, or any part thereof, as valid or lawful stock; that the defendants, holders of such stock, may be perpetually restrained from demanding or receiving any dividend thereon, from voting or offering to vote thereon, or in any manner using, transferring or disposing of the same, or any portion thereof; that the defendants, the said directors of the Milwaukee and Prairie du Chien Railway Company, may be removed from their offices in the said last named corporation; that the said directors, except said defendants, Crocker and Merrill, may be decreed and adjudged to account for and pay over to the said last-named

corporation, all moneys paid or caused to be paid by the said
36 last-named corporation, or out of its funds, in pursuance of any of the resolutions aforesaid, set forth in said schedules B, D, and E, or on contracts executed in pursuance thereof, and all moneys paid by or out of the funds of the last named corporation to or for the defendant, the Minnesota Central Railway Company, or upon bonds or coupons by it issued, or for duties upon railroad iron to it belonging, or for or upon any other indebtedness or charge against the said last-named company, or otherwise, for its benefit or upon its request; and all other moneys wrongfully paid or caused to be paid by the said present board of directors out of the funds of the said Milwaukee and Prairie du Chien Railway Company, so far as such moneys may not be repaid by the persons or corporations receiving the same; and may also be adjudged and decreed to return and deliver to said last-named corporation all stock wrongfully issued by it as aforesaid under their orders or resolutions, or in default to pay the amount thereof; and to pay all losses and damages of every nature which the said last-named corporation may have sustained, or may hereafter sustain, or which your orators may have sustained, or may hereafter sustain, by reason of any of the said wrongful payments, issues of stock, orders, resolutions, acts, and omissions of the said present board of directors, or of any of them.

That during the pendency of this suit, and until otherwise ordered by this court, the property of the said Milwaukee and Prairie du Chien Railway Company may be placed in the possession and control of a receiver to be appointed by this court, and used and managed under the control of this court.

That during the pendency of this suit, and until otherwise ordered by this court, the defendants, the Milwaukee and Praire du Chien Railway Company, and its said present directors, and all of its and their officers, agents and servants, and each of them may be restrained by a writ of injunction, for that purpose to be issued by this court, from paying any dividends, interest, or other moneys on account of any stock issue in pursuance of any of the resolutions aforesaid, and from receiving or counting any votes tendered on account of the same, and from recognizing or treating as valid any of such stock in any manner whatever; and from procuring or attempting to procure the passage of any act of the legislature of the State of Wisconsin, altering, amending, or repealing the said articles of association, or the passage of any other act in any way affecting the said last-named corporation, or its officers, or stockholders, or adding to or diminishing the powers of either; and from acting under any such law,
37 should one be passed, or exercising any right or power that may be conferred by such law; and from issuing or delivering any stock or bonds of the said last-named corporation for any purpose; and from using the money, means, property, or credit of the said last-named corporation for any purpose except the ordinary operating expenses of its railway; and from contracting any debt against the said last-mentioned corporation, executing, recording or issuing any bond, mortgage, or trust deed, or other evidence of debt of the

same; and from paying the whole or any part of the sum of $250,000 authorized by the said new board as aforesaid to be borrowed, any way, and which may have been borrowed in pursuance of such pretended authority, and from paying any other temporary or floating debt contracted with any bank or individual, by over draft or loans since the month of August, 1866, by the said Milwaukee and Prairie du Chien Railway Company, or by any person or persons, in its name, or on its behalf, or for its benefit, except to persons who have performed services, or furnished materials necessary in the operation of the railroad of the last-named company, and then only to the amount of the value of the such service and materials; and from transferring, or causing or permitting the transfer or issue of any stock of the said last-named corporation, upon its books or otherwise, which has been created or issued under any of the said resolutions; and from consolidating or uniting its stock, or attempting or taking any measures, direct or indirect, to unite or consolidate its stock, or any of it with that of any other corporation, or to impair or destroy its separate corporate powers.

That during the pendency of this suit, and until otherwise ordered by this court, all of the defendants, and the officers, agents, and servants of them, and each of them, may be restrained by a writ of injunction, for that purpose to be issued by this court, from transferring, or otherwise useing or disposing of any of the stock of the said Milwaukee and Prairie du Chien Railway Company, issued or created under or by virtue of the said resolutions, or any of them, and especially from giving or attempting to give any vote, assent, or agreement based upon or in consequence of such stock, or of the issuing or holding thereof, and from receiving any dividend, interest, or other money from the said last-named corporation or any of its officers or agents on account thereof, and from hindering or obstructing any committee properly appointed by stockholders of the said last-named company from making a full and free examination of the affairs of the said company, and of its books, records, accounts, papers, and property.

And that your orators may have such other and such further relief as the nature of their case may require, and as to your honors shall seem meet.

38 May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this court, to be directed to the said Milwaukee and Prairie du Chien Railway Company, the Milwaukee and St. Paul Railway Company, Alexander Mitchell, Hans Crocker, Sherburne S. Merrill; and also a like writ of subpœna to be directed to the said Russell Sage, Frederick P. James, Walter S. Gurnee, Nathaniel A. Cowdrey, Joseph Rudd, and Henry C. Stimpson, the Iowa and Minnesota Railway and Construction Company, the McGregor Western Railway Company, and the Minnesota Central Railway Company, and their confederates, when discovered, if they should come within the jurisdiction of this court, commanding them, and each of them, at a certain time therein specified, to appear before your honors in this honorable court, then and there to answer

the premises, and to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience. And your orators will ever pray.

SMITH & SALOMON,
Solicitors for the Complainants.

J. R. BRIGHAM,
Of Counsel.

NOTE.—The defendants, the Milwaukee and Prairie du Chien Railway Company, the Milwaukee & St. Paul Railway Company, Mitchell, Sage, Cowdrey, Gurnee, James, Crocker, Merrill, Rudd, and Stimson, are required to answer all the interrogatories above set forth.

All the defendants are required to answer the interrogatories numbered 2, 3, 30, 31.

The defendant, the McGregor Western Railway Company, is required to answer the interrogatories numbered 10, 11, 12, 13, 14, 15, 16, 17, 18, 24.

The defendant, the Minnesota Central Railway Company, is required to answer the interrogatories numbered 19, 20, 21, 29.

The defendant, the Iowa and Minnesota Railway and Construction Company, is required to answer the interrogatories numbered 21, 22, 23, 25, 26.

39 *Schedule A.—Articles of association of the purchasers of the Milwaukee and Mississippi Railroad Company.*

Whereas, the railroad of the Milwaukee and Mississippi Railroad Company has been sold in pursuance of certain foreclosure proceedings held in the United States district court, for the district of Wisconsin, on the complaint of George S. Coe, trustee, under a mortgage or deed of trust, made by the said Milwaukee and Mississippi Railroad Company, dated June 15th, 1852; and of Isaac Seymour, trustee, under several mortgages or deeds of trusts, made by the said Milwaukee and Mississippi Railroad Company, and dated respectively, April 1st, 1853, June 1st, 1855, July 1st, 1856, and September 17th, 1857; to the records of which court, and the proceedings had therein, in said complaints, reference is made for a more full and particular statement thereof.

And whereas, the undersigned have purchased said road at said sales, and all its property, real and personal, franchises and privileges.

Now therefore, be it known, that we, the undersigned, purchasers as aforesaid, being desirous of forming a corporation, under and by virtue of the laws of the State of Wisconsin, do hereby associate together for that purpose, and do hereby declare the following to be the certificate or articles of association, and we execute the same in duplicate, to the end that one may be filled with the Secretary of State for the State of Wisconsin, and the other to remain in the records of our corporation, as a record of our corporate rights, privileges and immunities.

First. Our corporate name shall be the "Milwaukee and Prairie du Chien Railway Company."

Second. The number of directors shall be nine, and a majority of them shall be citizens or residents of the city of New York. For the first year, and until others are legally chosen in their places, the following persons are the directors: Lewis H. Meyer, Wm. P. Lynde, Allan Campbell, Wm. Schall, John Wilkinson, John Catlin, Hercules L. Dousman, Geo. Smith, and N. A. Cowdrey.

Our stock basis shall not exceed $7,500,000, divided into 75,000 shares of one hundred dollars each.

40 The said shares of capital stock shall be subdivided as follows:

An amount, not exceeding $3,651,400, or 36,514 shares, shall be set apart and designated as "first-class preferred stock," and the full sum of one hundred dollars per share we hereby declare and acknowledge to be paid thereon, except on so much of this class as is hereinafter designated as scrip stock. The said first-class preferred stock shall be intitled to an interest of eight per cent. per annum for each and every year, before any payment of interest or dividends to any other class of stockholders. And whenever the company earn sufficient to pay a greater sum on all classes of stock, then they shall share pro rata in any dividend greater than eight per cent. per annum. Of the said first-class preferred stock, an amount not exceeding $2,556,000, or 25,560 shares, shall be set apart and designated as scrip stock; this scrip stock shall not at any time exceed the amount of the mortgage bonds hereinafter named; on this stock we hereby declare and acknowledge the sum of one dollar per share to be paid.

The scrip stock shall not be subject to any assessment, and shall entitle the persons in whose name it stands upon our books, to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any divivend or other profit or increase from the income or assets of this company.

It shall be issued in certificates of ten shares each, and shall accompany each mortgage bond of the company. If any mortgage bonds of $500 each are issued by the company, then so many of said certificates as are necessary may be issued in the sum of five shares each.

The holder thereof shall have the right, at any time within ten days after any dividend shall have been declared and become payable on said first-class preferred stock, to pay the full sum of one hundred dollars per share, by the surrender to the company of the mortgage bond named by its number in his certificate, and upon surrendering said certificate and bond he shall be entitled to receive therefor the same number of shares of first-class preferred full-paid stock, and entitled to dividends.

An amount not exceeding $1,086,800 or 10,868 shares of said capital stock shall be set apart and designated a second-class preferred stock, and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon.

This second-class preferred stock shall be entitled to an interest of seven per cent. per annum for each and every year, after paying the interest on their mortgage bonds, the amount provided for the
41 sinking fund, and an interest or dividend of eight per cent. per annum for each and every year on the first class preferred stock, and before the payment of dividends to any other class of stockholders than those above-named.

And whenever the company earns sufficient to pay a greater sum than eight per cent. on said first-class preferred, and seven per cent. on said second-class preferred stock, as hereinbefore provided, and seven per cent. on the common stock, then the said second-class pre-

ferred stock shall share pro rata in any greater dividend which may be made by the company, than as above-named.

The balance of said capital stock ($2,761,800, or 27,618 shares) shall be designated as common stock, and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon.

After the preferred stock above described shall have been reduced in amount to $3,000,000 as now required by law, the common stock may be increased to the amount of $3,000,000, but the increase of $238,200 shall not be sold by the company at less than one hundred dollars per share, cash at the time of sale, and the stockholders shall have it at their option for thirty days to take their pro rata at par.

Fourth. This corporation shall have all the powers, privileges, and immunities of railroad companies under the laws of Wisconsin, and especially to sue and to be sued, to acquire, use and sell, bargain and convey, all kinds of property, real and personal, necessary or convenient to operate, use and maintain said railroad, or the part or the whole of any other railroad hereafter acquired by them in the State of of Wisconsin. To make any by-laws for the government and the management of the corporation or its officers, not contrary to the laws of Wisconsin or of the United States. To make, have, and use a common seal, and the same to renew and alter at pleasure. And they are hereby invested with all the powers, privileges, and immunities which are necessary or convenient to carry into effect the purposes and objects of this corporation.

They are hereby authorized to transport, take and carry property and persons by railway, by force and power of steam, or of animals, or of any mechanical or other power, or of any combination between them, which said company may choose to apply, between the city of Milwaukee and the Mississippi river, and to either, and across said river, to and from all intermediate places. They are also authorized and empowered to lease, buy, purchase, receive, hold, use, sell and convey, all the property and franchises, furniture and equip-
42. ments, real and personal, of the Milwaukee and Mississippi Railroad Company; also the capital stock thereof, and any and all mortgage bonds, or other evidences of debt made by it, and when purchased by this company, they shall have all the legal and equitable rights, that the holders thereof had before their sale to this company.

Also to support, maintain, hold, use, sell, and convey one or more steam ferry-boats between Prairie du Chien and McGregor, in the State of Iowa.

Also to purchase, hold, use, sell, and convey, upon this line of railway or elsewhere, any materials, engines, cars, steam ferry-boats and other property, real or personal, necessary or convenient for this corporation, and for their use in transporting persons, goods and property; to purchase, receive and hold, and to sell and convey such real estate as may be necessary and convenient, in accomplishing the object for which the company is incorporated. Also to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property.

The said corporation shall have power to issue an amount not exceeding two thousand four hundred and twenty-eight bonds of one thousand dollars each, and two hundred and fifty-six bonds of five hundred dollars each, (in all, $2,556,000,) bearing an interest of seven per cent. per annum, the principle and interest payable in the city of New York, the interest semi-annually, the principal in the year A. D. 1891, with a provision, that if the company shall make default in the payment of interest, or sinking fund, as hereinafter provided, for six months, the principal shall thereupon become due, without demand or notice; and also, whenever the bonds are designated, as hereinafter provided, to be paid by the trustee or trustees, then the principal of said bonds so designated shall thereupon be come due, and to secure the same by a mortgage or trust deed upon this franchise, and all the real and personal property of the company, and to embrace the entire corporate property, and all its franchises and privileges.

It shall also contain a provision for a sinking fund by which the company shall be obligated to pay to the trustee or trustees named in the mortgage, or to their successors, such sums of money as shall amount to the difference between $204,480 and the interest for each year on the outstanding mortgage bonds, this amount to be paid in equal sums, as near as may be, on the first days of April and October in each year, commencing October 1st, 1862, with the payment of $13,000. The trustee or trustees shall, immediately after any payment is made them, designate by lot so many of the bonds as they have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the numbers designated in two or more of the newspapers printed in the city of New York,
43 and shall continue said notice once each week until the first day of the succeeding January or July when the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the interest or principal thereof.

Said trustee or trustees shall, on said first day of each January and July, pay the principal and interest of said bonds, and cancel and surrender the same to the company, and also the script certificates of stock accompanying said bonds.

The company shall keep a proper registry or account of all the bonds thus paid by them, or designated to be paid as aforesaid; and the number and amount of bonds thus cancelled shall be reported by said company to the stockholders, at each annual meeting, and said bonds shall be presented and shown at said meeting.

The bonds secured by said mortgage shall be convertible, at the option of the holder, into first-class preferred stock, at any time within ten days after a dividend shall have been declared and become payable on said preferred stock.

The said mortgage, deeds, and bonds, shall be signed by the president and secretary, and the seal of the company shall be affixed thereto.

And, except as herein expressly provided, the corporation shall have no power or authority to mortgage or otherwise encumber their

property, real or personal, unless the assent in writing of a majority in interest of the owners and holders of all the shares of capital stock issued by said corporation shall be first had authorizing the same.

No assents shall be taken from agents, or by proxy, unless the power of attorney held by the agent shall expressly authorize the particular assent asked for.

They shall have power to build and construct any new line of railway necessary or convenient in straightening the old line, or in extending it so as to conform to the requirements of the charter of the Milwaukee and Mississippi Railroad Company, or the law of the State, whenever or wherever the adjoining proprietors will donate the right of way and grade the line; but no expenditure shall be made for this purpose, unless it is from the surplus earnings of the company, after providing for the payment of interest on all its mortgage debt, the sum due the sinking fund, and dividends on the preferred stock.

Fifth. The immediate government and direction of the affairs of the company shall be vested in a board of nine directors; and after the present directors' time expires, they shall be chosen by
44 the stockholders of said company, in the manner hereinafter provided, and shall hold their office until the next annual meeting of the company, or until others are duly elected and qualified to take their place as directors.

The said directors shall elect one of their number president of the board, who shall also by virtue thereof be president of the company; and shall also elect a vice president from one of their number. They shall also appoint a secretary and such other officers or agents as the necessity or convenience of the company require.

A majority of the directors of the company shall constitute a quorum to do business; a less number may adjourn from time to time.

In all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place in the month of April of each year, and upon such notice as said company in their by-laws may prescribe, and if no regulation as to the time and place of the meetings of stockholders shall be made by the company, then the directors shall appoint the same.

In case it shall happen that an election of directors shall not be made on the day appointed for that purpose, said corporation shall not for that cause be dissolved, but said election may be had on any day to which the stockholders shall adjourn or which shall be appointed by the directors. And said directors shall have power to fill any vacancy which may occur in their board by death, resignation, or otherwise.

The said directors shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem proper and needful, touching the disposition and management of *of* the stock, property, estate, and effects of said company, not contrary to those established

by the stockholders, or to this act, or to the laws of the State of Wisconsin or of the United States, the transfer of shares, the duties and conduct of their officers, agents, and servants, and all matters whatever which may appertain to the concerns of said company.

Also to petition and apply for any law of the State of Wisconsin, in alteration hereof, and before the same becomes binding, shall submit the same to the stockholders for their approval.

Sixth. The signing of this certificate or articles of association is hereby declared to be a special meeting of the preferred stockholders, and a vote, and the assent of the preferred stockholders to borrow the money and to mortgage the road for the amount, as above set forth, and also to be a waiver of any notice required of the meeting on that subject.

Seventh. The certificates of stock issued by this company shall, upon their face, be made subject to all the terms and conditions of these articles of association.

Eighth. Upon the dissolution of this corporation, after the payment of all its debts, the remaining assets shall be divided among the different classes of stockholders, according to their preferences, that is to say, the first-class preferred stock, excepting the scrip stock, shall be first paid in full, and then the second-class preferred stock shall be paid in full, and the balance divided among the common stockholders pro rata. But this corporation shall not be dissolved by any act of the company, without an affirmative vote of two-thirds of each class of stockholders.

Ninth. These articles of association may be modified, altered, or amended, at any annual or special meeting, duly called, at which a majority in interest of each class of stockholders shall be present and voting in the affirmative. But no stockholder shall become liable to pay any money by any such action unless he shall have voted therefor or assented thereto.

Tenth. Annual meetings of the stockholders shall be held in the State of Wisconsin, in the month of April, in each year, after 1861, which meetings shall be called by the directors, who shall specify the time and place for holding the same; and thirty days previous to any annual meeting, the directors shall send through the post office to each stockholder, to the address as shown by the company's books, a full and specific statement of all the business, acts, and doings of the corporation up to the first day of January preceding.

Witness our hands at the city of Milwaukee, this 21st day of January, 1861.

L. H. MEYER.
JOHN CATLIN.
ALLAN CAMPBELL.
W. SCHALL.
LOUIS A. VON HOFFMAN.

46 *Schedule B.*

NEW YORK, *Sept.* 12, 1866.

The following resolution, on motion of Mr. Cowdrey, was unanimously adopted:

Whereas, The reports of the president and general manager of this company show that the net earnings of the road for the year 1861 were the sum of $436,030 00

Out of which there was paid for interest on their mortgage debt the sum of 118,405 00

Leaving undivided $317,625 00

And that a dividend was made and paid therefrom to the 1st and 2d preferred shareholders of 155,264 00

Leaving undivided $161,361 00

which was applicable to dividends on the common stock, but was temporarily used in the purchase or payment of the mortgage bonds, and in the purchase of additional property for the company; and

Whereas, It is just and equitable between the different classes of stockholders, that the net earnings, after paying interest on mortgage debt, should be divided according to their respective preference, or capitalized; and

Whereas, The said remaining net earnings have never been either divided or capitalized, except to the preferred shareholders; and

Whereas, The company now has the ability to divide said remaining net earnings of 1861; therefore

Resolved, That we do hereby declare a dividend, from the undivided net earnings of 1861, to the common stockholders of three dollars per share, payaable on and after September 15, 1866, free from U. S. revenue tax.

Resolved, That in consequence of the amount required for repairs and new construction, we defer making a dividend of the undivded net earnings for the years 1862, 1863, 1864, and 1865.

47 *Schedule C.—Copy of lease contract of Milwaukee & Prairie du Chien Railway Company with McGregor Western Railway Company.*

This indenture, made and entered into this eleventh day of March, in the year of our Lord 1865, by and between the McGregor Western Railway Company, a corporation duly formed and organized under the laws of the State of Iowa, party of the first part, and the Milwaukee and Prairie du Chien Railway Company, a corporation duly formed and organized under the laws of the State of Wisconsin, party of the second part.

Witnesseth: That for and in consideration of the mutual covenants and agreements hereinafter contained and expressed, to be by the parties hereto respectively observed, performed, and kept, the said

parties have mutually covenanted and agreed, and by these presents do covenant, promise, and agree to, and with each other, that the said party of the first part shall give possession of its railroad, together with all its tolls, rents, receipts and incomes, known as the McGregor Western Railroad or Railway, to the said party of the second part, and that the said party of the second part shall take possession thereof, and hold, use, maintain, and operate the same in the manner, for the period, and upon and subject to the terms and conditions hereinafter expressed, to wit:

Article 1st. This contract shall continue and be in force and operation for and during the period of nine hundred and ninety-nine (999) years from the time of taking possession thereunder of the first sixty (60) miles of the said railroad, extending west of the Mississippi river, of which sixty (60) miles, forty (40) miles extending from the Mississippi river to Ossian, in the State of Iowa, shall be taken possession of on the written assent to this contract by a majority of each class in interest of the stockholders of the party of the second part; and on the written assent thereto of the bondholders of the party of the first part, to the amount of $850,000, as specified in the seventeenth article of these presents; and possession of the remaining portions of the said railroad, twenty miles westerly of
48 Ossian, to Decorah, shall be given when the same shall be completed and ready for use and operation, according to the contract for the construction thereof, heretofore made by the party of the first part with the Iowa Railroad Construction Company. It being understood and agreed, by and between the parties hereto, that when the said railroad, or any part thereof, shall be delivered into the possession of the party of the second part, the said railroad, or any part thereof so delivered, shall have been completed and finished in accordance with the said contract for the construction thereof, heretofore made by the party of the first part with the Iowa Railroad Construction Company, (a copy of which contract is hereunto annexed,) and if the said railroad shall not have been completed and finished in accordance with the said contract, and within the time specified therein, then possession shall be given to the party of the second part of the entire property and road, finished or unfinished, on the first day of August, eighteen hundred and sixty-five, and the said party of the second part may complete and finish the same in the manner and on the conditions hereinafter provided. Provided, however, that the said party of the first part shall not be required to deliver the said railroad, or any part thereof, equipped with rolling stock, but that such rolling stock shall be supplied by the party of the second part, as hereinafter mentioned.

Article 2nd. The party of the second part shall, and will, during the continuance and operation of this contract, furnish all tenders, locomotives, passenger, baggage, and freight cars, and any and all other rolling stock which may be necessary to efficiently and economically operate the said railroad, or such part thereof as may be delivered into the possession of the said party of the second part, under or pursuant to this contract. Such equipments of rolling stock so to

be furnished by the said party of the second part for use upon the said railroad, shall at all times, be equal in the character and quality thereof, (so far as the business of the said railroad shall require,) to that used by the said party of the second part upon its own railroad, and in the quantity thereof shall not be less than that used upon the railroad of the party of the second part, in proportion to the miles of the respective roads, unless the party of the first part shall, in writing, consent to the use of a less amount for a time to be specified in such written consent; and if the business of the said McGregor Western Railway shall require it, the amount of such rolling stock shall be greater than the proportion aforesaid, but nevertheless, shall not exceed such proportion, except with written consent of
49 the party of the first part; provided, however, that the party of the second part shall not be required to withdraw or reduce the amount of any equipment which it shall have once supplied to or put on the said railroad, upon the requisition or with the written consent of the party of the first part.

Article 3d. The party of the second part shall receive and collect all the tolls, incomes, rents, issues, and profits of said railroad, and after defraying the expenses of operating, and maintaining the said railroad, and of all repairs and replacements thereof, and of all repairs and replacements of the equipments of rolling stock so to be furnished by it, including such as have been purchased from the party of the first part, retain to itself, the said party of the second part, as compensation for the use of such equipment of rolling stock, a sum equal to eight per cent. per annum upon the cost of such equipment of rolling stock, as such cost shall be ascertained and determined by and from the books, accounts and vouchers of the said party of the second part, and shewn thereby to be in the first preferred stock of the said party of the second part, or the proceeds or avails thereof.

Article 4th. The party of the second part, after deducting from the earnings of the said railroad the amount to be retained under article third of these presents, shall monthly, and once in each and every month, apply the remainder of such earnings as follows:

1. To paying mechanics' liens upon the said railroad, or some part thereof, and judgments against the party of the first part, if such exist.

2. To pay current maturing interest on the bonds of the party of the first part, which bonds shall not exceed in amount $18,000 per mile upon the first sixty (60) miles of said railroad, nor $15,000 per mile on any and all extensions beyond the said first sixty (60) miles, unless and except as hereinafter provided.

3. The balance to the party of the first part, or as the said party of the first part shall direct.

Article 5th. If, on delivery, under this contract of the first sixty (60) miles of the said railroad to the party of the second part, the same shall not be in the condition required by the contract for the construction thereof hereinbefore mentioned, or if the first thirteen miles of the said railroad shall not have been relaid with rails of from

fifty-six to fifty-eight pounds per yard, and adequate chairs; and if within one month after such incomplete and inferior condition shall have been ascertained, as hereinafter provided, the party of the first part shall not have furnished the cash means necessary to put
50 the said railroad in a proper condition and also to relay the said thirteen miles as aforesaid, then and in that case the said party of the second part shall have the right to execute the work so as aforesaid required to be done, and may, at its own option, either use the earnings of the said railroad for that purpose, or advance its own funds or preferred stock, in which latter case it shall be reimbursed in the manner hereinafter provided, or it may execute such work partly with the earnings of the said railroad, and partly with its own funds or preferred stock, and provided further, that the said party of the second shall not thereafter use the earnings of the said railroad, or any part thereof, to put the said railroad, or any part thereof, by repair, replacement, improvement, or otherwise, in any better or more highly finished condition, than the railroad of the said party of the second part, known as the Milwaukee and Prairie du Chien Railway, shall be, and that the condition of the railroad last aforesaid shall be the criterion for the condition in which the said McGregor Western Railway shall be put and kept, during the continuance and operation of this contract.

Article 6th. In the event of the party of the second part making, as aforesaid, any advances for completing the said railroad, according to the requirements of the contract for the construction thereof, or for relaying the said first thirteen miles thereof with heavier rails and adequate chairs, the earnings of the said railroad shall be appropriated and applied in the manner following:

1. To the payment to the said party of the second part of an amount equal to eight per centum per annum upon the proper cost of the rolling stock placed upon the said railroad by the said party of the second part, pursuant to this agreement, and eight per centum per annum on the amount of advances made by the party of the second part for completing the said railroad, and relaying with such heavier rails and adequate chairs the said thirteen miles thereof.

2. To the payment of the ordinarily operating expenses, including repairs and replacements of the rolling stock.

3. To the payment of current monthly interest on the bonds aforesaid of the said party of the first part.

4. To the repayment of the advances mentioned in this article, made by the party of the second part, and to repurchase the stock issued for such advances, until all such stock shall have been repurchased and said advances paid.

5. The balance to the party of the first part, except in the event that the party of the second part shall elect to complete the
51 said railroad, (and relay the said tract wholly or partly by means of earnings,) in which case the entire earnings thereof, after paying the interest on the cost of the rolling stock aforesaid, and on said advances, or such part of the said earnings as may be necessary, may be applied to that purpose.

Article 7th. The said party of the second part shall purchase from the party of the first part all and singular the rolling stock which the said party of the first part may have on hand when the party of the second part takes possession of the said railroad, and shall pay for the same in its first preferred stock at the rate of 105 per cent. cash, a price to be fixed upon by the master mechanics of the parties hereto, and the master mechanic of the Chicago and Northwestern Railway Company, or a majority of them, payable immediately upon possession being taken under this agreement and valuation being given, provided that said rolling stock be free from liens.

Article 8th. The party of the second part shall fix the rate of passenger fare and of freight upon the said railroad, provided that such rates for through business shall, in no case, be lower than the through rates at the time charged upon the railroad of the party of the second part, pro rata, and the local rates shall be kept as high as the state of business from time to time will warrant.

Article 9th. The party of the first part shall, from time to time, appoint an auditor, who shall, at all times during business hours, have the right, by free access to the books and papers, to examine all accounts of the party of the second part of the business of the said railroad, or in any manner concerning the same.

Article 10th. In case the party of the second part shall elect not to make any advances for the purposes mentioned in article fifth of these presents, but to use the earnings of the said railroad therefor, then and in that case the party of the first part shall have the right, in its discretion, to put the railroad in the required condition at its own proper costs and expenses, and the party of the second part shall receive, appropriate and apply the earnings in the manner specified in article third of these presents, and in no other manner, using the surplus to pay the interest on the bonded debt of the party of the first part, which bonded debt shall not exceed the amount hereinbefore specified, and after satisfying such interest, paying the balance, if any, to the party of the first part.

52 Article 11th. All materials for the completion or extension of the said McGregor Western Railroad shall be carried over the roads of both parties at the actual cost of transporting the same.

Article 12th. In case at any time or times during the possession of the said railroad under this contract, the said party of the first part shall disapprove of the tariff of charges for local traffic thereon, alleging the same to be too low or injurious to business upon said railrad, or otherwise inexpedient or objectionable, and shall notify the party of the second part of such disapprobation and of the particulars complained of, and thereupon the parties shall be unable to agree in respect thereto, such difference shall, upon a notice of five days by either party to the other, be referred and submitted to the superintendent for the time being of the Chicago and Northwestern Railway Company, or to such other disinterested and competent railroad officer or manager as they may agree upon as arbiter, and the decision of such arbiter shall in all cases be final and binding and conclusive upon the parties hereto, in respect to the matters to him submitted under this article.

Article 13th. The first thirteen miles of the said railroad, running from McGregor to Monona, shall be relaid by the party of the first part, with rails of from fifty-six to fifty-eight pounds per yard, and adequate chairs; and, immediately upon possession being taken to Decorah, and not later than the first day of August, 1865, the entire line shall be thoroughly examined by a commission to consist of George L. Dunlap, of the Chicago and Northwestern Railway Company, James C. Spencer, of the said Milwaukee and Prairie du Chien Railway Company, and William Greene, of the said McGregor Western Railway Company, if the services of the said persons can be obtained for that purpose; and if the service of any of the three persons mentioned cannot be obtained, then to consist of such of them as will serve, and of such other competent railroad engineers, or superintendent or superintendents, or other competent person or persons as the parties hereto may agree upon in substitution for the person or persons whose services cannot be obtained.

The three persons who shall be so appointed as aforesaid for the purpose of examining the condition of said railroad shall, upon making such examination, furnish detailed reports to the parties hereto respectively of the result thereof, and shall report in full what, under this contract, the "McGregor Western Railroad" requires to have done to it and on it, first, to put it in the safe running condition contemplated by this contract, and secondly, in the condition which the construction contract with the Iowa Railroad Construction
53 Company requires or entitled the Milwaukee and Prairie du Chien Railway Company to demand; and shall so report, without reference to the cost thereof.

Article 14th. The bonds of the party of the first part referred to in this agreement, are certain mortgage bonds heretofore issued, or hereafter to be issued by the party of the first part, and not exceeding in amount $18,000 per mile for the first sixty miles, and which are secured by a first lien upon the first sixty miles of the said railroad, and also certain other bonds hereafter to be issued, and not to exceed in amount $15,000 per mile for each and every mile of the said railroad which may be constructed beyond the said first sixty miles.

Article 15th. The party of the second part shall, at any time during the period commencing with the execution of these present, and ending one year after the payment, satisfaction or discharge of the present bonded debt of the said party of the second part, according to the provisions of the sinking fund therefor or otherwise, (provided such period shall extend at least three years from the time of taking possession,) have the option to purchase the said railroad of the party of the first part upon the following terms, to wit:

1. The said party of the second part shall issue to the holders of the bonds of the said party of the first part, the second preferred stock of the said party of the second part with all the rights, priorities and privileges to which such second preferred stock is now entitled, at the par value thereof, in exchange for the bonds aforesaid at the par value thereof of the party of the first part, issued or to

be issued, which said bonds shall thereafter be held and owned by the said party of the second part.

2. The said party of the second part shall issue to the stockholders of the party of the first part its common stock, to the amount, and in the proportion of one hundred dollars thereof for every two hundred dollars of the stock of the said party of the first part.

Provided, nevertheless, that the amount of the said mortgage bonds shall not exceed eighteen thousand dollars per mile for the first sixty miles of the said railroad as aforesaid, and fifteen thousand dollars per mile for the remaining portions of the said road; and provided, that the stock of the party of the first part shall not exceed twenty-two thousand dollars per mile for each and every mile constructed, and that if the said bonds or stock shall exceed such amounts, the proportion of stock, preferred and common, for which the same shall be exchangeable as aforesaid, shall be correspondingly reduced.

54 Article 16th. The said party of the second part shall, during the term aforesaid, maintain and operate the said railroad, and every part thereof, in the most judicious and economical manner, and shall, at the expiration, or other sooner determination of such term, surrender and deliver up to the party of the first part, its successors or assigns, the said railroad and every part thereof, with all additions and improvements thereto, and all repairs and replacements thereof, in good order, repair and condition, and shall also, on surrender and cancellation of all the stock issued and in the purchase of rolling stock, for the purpose of equipping the said railroad under this contract, or an equivalent amount of the stock so issued and used, convey and deliver to the party of the first part, the said rolling stock, with all additions, improvements, repairs and replacements thereof, to be thereafter held and used by the said party of the first part, its successors and assigns, to it and their own proper use, benefit and behoof.

Article 17th. The party of the first part shall, so far as the same may be practicable, obtain the assent and approval of the holders of the bonds aforesaid to this agreement, and shall cause the holders of bonds so assenting and approving, to signify and legally evidence such assent and approval by an endorsement or other proper and sufficient memorandum thereof, to be made upon said bonds, and holders of said bonds to the amount of $850,000, shall assent as aforesaid, before this agreement shall take effect, and no issue of bonds shall be hereafter made by the party of the first part, except subject to this agreement.

Article 18th. The party of the second part shall allow to the party of the first part, and pay, subject to all the terms of this agreement, a drawback of fifteen per cent. on the interchange of business between the roads of the praties hereto, according to and in conformity with the terms and conditions of the resolutions of the board of directors of the said party of the second part, passed January, 1861, and 1862, which drawback is hereby extended and continued in force for and during the period of thirteen years from the date hereof, being a period equal to that for which the Chicago and Northwestern

Railway Company have agreed to pay a similar drawback, and such drawback of fifteen per cent. shall be allowed and paid by the party of the second part to the party of the first part, as part of the earnings of the said McGregor Western Railroad, for and during such period.

Article 19th. Whenever, and as soon as the Minnesota Central Railroad shall reach Austin, or shall reach the Iowa State line, or shall reach such a point of forwardness in construction as to
55 leave no reasonable doubt of its early completion to either of these points, then, and in either of such cases, the party of the first part shall extend the said McGregor Western Railroad so as to connect the same with the said Minnesota Central Railroad at either of the points aforesaid; and in the event that the said party of the first part shall delay the commencement of the work for such extension, or having begun the same shall delay its completion, the said party of the second part shall have the right, at its own option, to build such extension to either the State line of Iowa or to Austin, aforesaid, to connect with the said Minnesota Central Railroad; and in case the said party of the second part, shall, upon such failure, omission, or neglect of the party of the first part to extend the said line, elect to build such extension, and in order to procure the means therefor, shall issue and dispose of preferred stock, then the said party of the second part shall be entitled to retain out of the earnings of the said railroad, before paying interest on the bonds aforesaid of the said party of the first part, the interest which the said party of the second part may have to pay upon the preferred stock so issued, according to the terms of the issue thereof, and after paying current accumulating interest upon the said bonds of the party of the first part, or setting apart an amount sufficient to pay the same, to retain the balance to buy up and cancel the amount of stock so issued for the purposes of such extension.

Article 20th. It is further understood and agreed that the party of the second part may issue its second preferred or common stock, instead of its first preferred stock, for all or any of the purposes for which, in this agreement, the issue of first preferred stock is mentioned, and that all and singular the provisions hereof, in respect to using the earnings of the said railroad, to retire such first preferred stock, or to pay interest thereon, shall apply to the second preferred or common stock, provided, always, that such second preferred stock or common stock shall not be used for such purposes in the place and stead of first preferred stock, unless it can, on issue, be sold at par for cash in New York.

Article 21st. No extension of the said railroad, beyond such sixty miles, shall be made or contracted for, except by and with the consent and under and subject to the specifications to be furnished by the party of the second part; and the said party of the second part may, at its option, assume the building thereof, provided that it shall undertake the same at as low a rate as any other responsible railroad contractor for the same work.

Article 22d. Increased business necessarily requiring increased

facilities for transacting the same, such increased facilities
56 shall, from time to time, during the continuance and operation of this agreement, be furnished by the party of the first part; and in case the said party of the first part shall make default therein, the same may be supplied by the party of the second part, and the expense thereof withheld out of the earnings, before paying interest on the said bonds.

Article 23rd. In case the party of the second part shall elect to avail itself of the option herein granted to purchase the said railroad, the party of the first part shall, upon such purchase, grant, assign, and convey to the said party of the second part all the right, title, and interest of the said party of the first part in and to any and all land grants, donations, and subscriptions which the said party of the first part, or the said Iowa Railroad Construction Company may be entitled to, on such portions of the road as may be unfinished at the date of such purchase.

Article 24th. In all cases where the party of the second part shall issue preferred or common stock for the construction, improvement, or extension of the said railroad, as herein provided, the interest or dividends payable upon such stock shall be retained by the said party of the second part out of the earnings of the said railroad prior to, and before, paying interest on the bonds of the said party of the first part, and the balance of such earnings remaining, after the payment of interest on said bonds, shall be used to buy up and cancel the stock so issued by the party of the second part for the purposes of such construction, improvement, or extension, and until the stock so issued shall be purchased in or otherwise retired or cancelled, the same shall be a first and paramount lien upon the said railroad until satisfied in full, with all interest thereon. And the said party of the second part shall not be required to surrender possession of the said railroad until all the stock issued or cash advances made by the party of the second part, for the use and benefit of the party of the first part under this agreement, shall have been paid or bought up, and surrendered as aforesaid.

In witness whereof, the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the same to be attested by their respective presidents, treasurers, and secretaries, on the day and year first above written.

The McGregor Western Railway Company, by

[SEAL.] GEORGE GREENE, *President*.

H. H. BOODY, *Treasurer*.

H. B. WHITEHOUSE, *Secretary*.

57 The Milwaukee and Prairie du Chien Railway Company, by

L. H. MEYER,

[SEAL.] *President*.

WILLIAM TAINTOR,

Secretary and Treasurer.

The Iowa Railway Construction Company, by

WM. GREENE, *President*.

GEO. GREENE, *Treasurer*.

Schedule D.

NEW YORK, *Sept.* 20, 1866.

On motion of Mr. James, the following resolutions were unanimously adopted:

Whereas, the advances made by this company to the McGregor Western Railway Company, under the lease contract with them, now amounts to over $500,000, and the president, vice president, treasurer of that company, and a committee of the board of directors thereof, have recently claimed that a large portion of our advance to them was unauthorized, and therefore not secured as contemplated by the company under said lease contract; and

Whereas, said McGregor Western Railway Company has, in violation of the equities of said lease contract, issued a large amount of bonds and capital stock in excess of the amount authorized by said lease, as near as we can ascertain, about $42,000 of mortgage bonds, and $200,000 of capital stock; not applying the proceeds thereof to the construction or equipment of said road, but disregarding our contract and our rights thereunder; and

Whereas, it is possible that they may continue to do so, and thus do us great and irreparable injury; therefore

Resolved, That we will now exercise the option given us under said lease contract, to purchase the said McGregor Western Railway, and the bonds and stock issued by them; and that to this end we hereby increase our second preferred stock $1,125,000, or 11,250 shares, of which amount we direct $600,000, or 6,000 shares, to be credited on our ledger to the vice president and assistant secretary, to be
58 by them transferred to the holders of $600,000 of the mortgage bonds, that amount being the majority of the bonds heretofore issued by the said McGregor Western Railway Co.; for the principal thereof, and for the interest due on said $600,000 of mortgage bonds, we direct to be given our first preferred stock from the issue heretofore authorized to aid in constructing the said McGregor Western railway. And to the end that we may get control of the capital stock of said McGregor Western Railway Company, pursuant to the terms of said lease contract, we do hereby increase our common stock $1,760,000, or 17,600 shares, of which increase we direct $500,000, or 5,000 shares, to be credited upon our stock ledger to the vice president and assistant secretary, to be by them transferred to the holders of 10,000 shares of said McGregor Western Railway Company's capital stock; that is to say, one share of ours for two of theirs.

One million of said increase of capital stock is hereby set apart to take up the stock of the Minnesota Central Railway Company just purchased, or united to, and consolidated with, said McGregor Western Railway Company.

Schedule E.

Whereas, it has become evident that, in order that we may protect our advances made under the lease contract with the McGregor Western Railway Company, that we must exercise the option given us therein, to purchase the said railroad; and

Whereas, it is equally obvious that to make our purchase productive, we must cause the road to be built from Cresco to Owatonna, which will thus give us the traffic of 335 miles of road over our present line from Prairie du Chien to Milwaukee; therefore

Resolved, That we hereby approve of the proposition submitted to us jointly with the McGregor Western Railway Company, to build said road from Cresco to Owatonna by the Iowa and Minnesota Railway Construction Company, and that we recommend the directors of the McGregor Western Railway Company to make said contract, and that we will do and perform the part proposed for us to do in said proposition.

That we do hereby increase our capital stock, designated common stock, for the purchases herein named, the sum of $1,000,000, or 10,000 shares; and we hereby authorize and request our president, or vice president and secretary, or assistant secretary, to execute and deliver on our behalf said contract, and to put up the 59 stock in the way therein proposed, and to do any and all other things desirable to be done, to effect the objects of this company as herein set forth.

The proposition of the Iowa and Minnesota Railway and Construction Company is as follows, viz :

NEW YORK, *Sept.* 20, 1866.

To the McGregor Western Railway Company, and to the Milwaukee and Prairie du Chien Railway Company:

GENTLEMEN: The Iowa and Minnesota Railway and Construction Company propose to build for your line of road from Cresco, to its present terminus in Iowa, to Owatonna, the present terminus of the Minnesota Central railway in Minnesota—a distance of about eighty-five miles—thus connecting the two lines of road from McGregor to Minneapolis, and from thence via St. Paul and Pacific to St. Cloud, giving your road the additional traffic derived from near 250 miles of railroad, viz: from Cresco to St. Cloud, and the Minnesota river to Shakopee.

The road, bed and grade, to be a first-class sub-grade road, and built to the acceptance of your engineer.

The iron to be 56 lbs. to the yard, and of Crawshays, Baileys, Guests, or other first-class manufacturer's make.

We will also build sufficient side tracks, not exceeding 5 miles in length, also suitable and proper station buildings for passengers and freight, and shops in Austin. The entire cost of the buildings, to be erected by us, not to exceed $25,000; all of the work to be done under the direction and to the acceptance of your chief engineer.

Your companies to furnish without charge, right of way, frogs, and switches, and sufficient cars and locomotive power for construction trains, and ready and prompt transportation for materials and men from Milwaukee and Minneapolis, or at any intermediate points on the line of road, from Milwaukee to Cresco, and at any point on the line to be constructed, also to receive the same at Mineapolis or any intermediate point on the line thence to Cresco.

Your companies also to do all the ballasting of the road to be built at your own expense.

We will undertake and build this line of road within two years of January 1st, 1867, as above, for the consideration of $2,000,000 of the first mortgage bonds, and $2,000,000 capital stock of the McGregor Western Railway Company, to be paid pro rata to us, for each 5 miles, as the work advances, and as iron and materials are actually purchased, which, when purchased and paid for as above by you are to be transferred to you. And also all lands donated to you, either by you, either by Congress, by the State of Iowa, or by any counties, or individuals, or corporations, to aid in building the line of road from McGregor west to Cresco, and that may be hereafter donated to you, applicable to the line of road from McGregor to Austin, not heretofore conveyed, or agreed to be conveyed to the Iowa Construction Company, or which said Construction Company are not entitled to receive, by reason of contracts heretofore made with them.

You are to accept said road in sections of 5 miles each, whenever the same is completed, and thereafter to open and keep so much as is accepted in repair.

The bonds and stocks above named to be issued at the time of executing the detailed contract for carrying into effect this proposition, and to be put into the hands of trustees, to be held in escrow, and to be delivered to us on the certificate of your chief engineer.

The lands above named to be conveyed to us as soon as you get title to them, and we have purchased the iron for building said road.

Our proposition is upon the following conditions:

1st. That the Milwaukee and Prairie du Chien Railway Company will, before the execution of the detailed contract, exercise the option given it in its lease from the McGregor Western Railway Company, to purchase that road on the terms named therein, or failing to at once get all of the present bonds and stock now issued by the McGregor western railway, it will put up in trust a sufficient amount of its second preferred and common stocks to take up said McGregor bonds and stocks as agreed under said lease.

2d. That the Prairie du Chien board of directors will request, authorize, and empower the McGregor Western to make a contract to carry this proposition into effect, and then to make a new 7 per cent mortgage on its whole line of road from McGregor to Minneapolis and St. Paul, of $4,000,000, of which $2,000,000 are to be reserved to exchange for and take up a large amount of Minnesota Central railway mortgage bonds on the line from Minneapolis and St. Paul to Owatonna and the State line; thus making but one mortgage of

$4,000,000 on the whole line, say 220 miles, from McGregor to Minneapolis and St. Paul; that said mortgage shall be a first mortgage lien upon the property, and to that end the Prairie du Chien Company shall waive their priority of lien, for advances made to the McGregor Western Railway Company.

3d. That the Prairie du Chien Company will, as provided in said lease, issue in exchange for said $2,000,000 of McGregor
61 Western stock, $1,000,000 of their common stock, and that it will put the same up as an escrow as above provided in case of the McGregor securities.

4th. That the McGregor Western will make said mortgage as above provided, and that they will not issue any more of their capital stock for any purpose, without the previous approbation of the Prairie du Chien Company.

DISTRICT OF WISCONSIN, *ss:*

Louis H. Meyer, being duly sworn, says, that he is the agent of the complainants named in the foregoing bill of complaint; that he has heard the said bill read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true; that he was the agent of many creditors of the Milwaukee and Mississippi Railroad Company, who held bonds thereof, secured by one or more of the mortgages named in said bill; that he personally knew of the foreclosure named in the bill; that he is one of the persons who signed the said articles of association; that he was president of the Milwaukee and Prairie du Chien Railway Company, defendant, from its organization, until the said election in June, 1866; that he is familiar with the financial transactions of said company during that time; and with the condition of the company, and of its property during that period; that he is now a holder of the scrip and preferred stock of the said company to the amount of over fifty-seven thousand dollars, and that he is the agent for, and representative of the holders of such stock held by others mentioned in the said bill as complainants therein, or desiring this suit to be instituted to the amount of over one million two hundred thousand dollars; that he is one of the committee of investigation mentioned in the said bill, and as such has made personal examination into the affairs of the said company, and the transactions of the said present directors; that he has personally inspected the books and records of the said company to a considerable extent within the past two months, and has seen therein the entries and proceedings stated in said bill as appearing therein; that he has resided in the city of New York for many years past, and for the last six weeks he has chiefly been in the cities of Madison and Milwaukee, Wisconsin, and engaged as the agent of stockholders as aforesaid in making such examinations, in learning from all sources accessible to him the facts relative to the matters set forth in the said bill, and in opposing the attempt of the president and some of the said directors to procure legis-

lation as set forth in the said bill; which legislation would, if pro-
62 cured, have conferred upon the said directors the power to consolidate the stock of the said company with the stock of any other railway company having a railroad in Wisconsin, intersecting with said Milwaukee and Prairie du Chien railroad, thus destroying the separate existence of the said Milwaukee and Prairie du Chien Railroad Company, and the rights of the said holders of preferred stock, and would also have enabled the said directors to make a pretence and show of having a legislative ratification of many or all the illegal and fraudulent acts of the said directors in the said bill set forth; and this affiant fully believes that the said directors design to effect such results, namely, such ratification, and also a consolidation of the last-named company with the Milwaukee and St. Paul Railway Company; and this affiant also believes that a consolidation with the Chicago and North western Railroad Company would inevitably follow such legislation; that and this affiant has also a large personal acquaintance with the members officers of the different corporations named as defendants in the said bill, and has, from their reports and from other sources, a general knowledge of the railroads controlled by them, and of the past situation and transactions of the said corporations; that he has had official relation with most of them in his character as president as aforesaid; that he had a particular knowledge of the prices and market values of the stocks and securities of the said several corporations for several years past; that the market value of the scrip and preferred stock of the said Milwaukee and Prairie du Chien Railway Company, until since the first day of January last, have been from ninety to one hundred and sixteen per cent. of their par value, and all of the stock of the last-named company has uniformly rated in the market far higher than the stocks of the said other corporations of like class; that since the exposure of the transactions stated in the said bill, the values thereof have declined considerably—from fifteen to forty per cent., and more—and some kinds are not saleable; but if the affairs of the said Milwaukee and Prairie du Chien Company were restored as they stood in June last, the stocks of that company would be worth from fifty to one hundred per cent. more than the stocks of like class of the said Milwaukee and St. Paul Railway Company, and those of the said Chicago and Northwestern Company; that all or nearly all of the stocks so illegally issued as aforesaid appear to be held by or for the said Milwaukee and St. Paul Railway Company, as this affiant knows from the last annual report of that company, and the statement of its officers, and for other reasons; that the said Alexander Mitchell, president of the two companies, has frequently within the
63 last two months avowed, in the presence of this affiant and others, their intention to effect a consolidation of the stocks of the said two companies, and the directors of the last-named company have declared the same intention in their last annual report; and the said president has, in the hearing of this affiant, also declared the intention of the said directors of the Milwaukee and Prairie du Chien Railway Company, to mortgage the property of that company to the amount of six million dollars, under legislative authority, to be

procured by them for that purpose, without the assent of the holders of the preferred stock of said company.

L. H. MEYER.

Subscribed and sworn to before me, April 3d, 1867.

JAMES McFARLIN,
U. S. Commissioner, Wis. Dist.

Exhibit No. 2.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

[L. S.] The President of the United States to the Milwaukee and Prairie du Chien Railway Company, The Milwaukee and St. Paul Railway Company, Alexander Mitchell, Hans Crocker, Sherburne S. Merrill, Russel Sage, Frederick P. James, Walter S. Gurnee, Nathaniel A. Cowdrey, Joseph Rudd, Henry C. Stimpson, The Iowa and Minnesota Railway and Construction Company, The McGregor Western Railway Company, and the Minnesota Central Rail Company, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America, for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of May, next ensuing, at Milwaukee, to answer to a bill of complaint, exhibited against you in our said court, by Samuel B. How, John Catlin, James L. Bogert, Thomas C. Streets, G. D. Rosengarten, Grace J. Coe, Samuel G. Coe, William L. Lockwood, George B. St. John, Charles P. William, and William A. Cummings.

And to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

64 This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Milwaukee and Prairie du Chien Railway Company, the Milwaukee and St. Paul Railway Company, Alexander Mitchell, Hans Crocker, Sherburne S. Merrill, Russel Sage, Frederick P. James, Walter S. Gurnee, Nathaniel A. Cowdrey, Joseph Rudd, Henry C. Stimson, The Iowa and Minnesota Railway and Construction Company, The McGregor Western Railway Company and the Minnesota Central Railway Company, if to be found in his district, and due return thereof made.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this third day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-first.

A. SCOTT SLOAN, *Clerk*,
By JAMES McFARLIN,
Deputy.
SMITH & SALOMON,
Solicitors.

It is ordered by our said court, that the said defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Monday, the eighth day of April, 1867, at ten o'clock in the forenoon, why an injunction should not be issued, and a receiver be appointed, according to the prayer of the bill on file served on the within named Alexander Mitchell and Hans Crocker, by delivering to each of them personally a copy of this subpœna, together with a copy of the bill of complaint in the within entitled cause, this 4th day of April, A. D. 1867.

CASSIUS FAIRCHILD,
U. S. Marshal.

Fee, $11 20.

Served on the within named Milwaukee and Prairie du Chien Railway Company by delivering to William Tanitor, secretary of said company a copy of this subpœna, together with a copy of the bill of complaint in the within entitled cause, and served on the within named Milwaukee and St. Paul Railway Company by delivering personally to A. Cary, secretary of said company, a copy of this subpœna, together with a copy of the bill of complaint in said cause, and served on the within named Sherburne S. Merrill by delivering to him personally a copy of this subpœna, and by giving him
65 a copy of the aforesaid bill of complaint this 4th day of April, A. D. 1867, and served on the within named Iowa and Minnesota Railway and Construction Company. The McGregor Western Railway Company, and the Minnesota Central Railway Company, by delivering to Alexander Mitchell, a director in each of said corporations, three several copies of this subpœna, together with three copies of the bill of complaint in said cause, being one for each of said companies, and served on the within named Walter S. Gurnee, by delivering to him personally a copy of this subpœna, together with a copy of the bill of complaint in the within entitled cause, this 6th day of April, A. D. 1867.

CASSIUS FAIRCHILD,
Marshal.
By WM. S. JACKSON,
Deputy.

Fees, $29 28.

Exhibit No. 3.

Circuit court of the United States in and for the district of Wisconsin. In equity.

The demurrer of the Milwaukee and Prairie du Chien Railway Company, one of the defendants to this bill of complaint of Samuel B. How, John Catlin, James L. Bogert, Thomas C. Streets, G. D. Rosengarten, Grace J. Coe, Samuel G. Coe, William L. Lookwood, George B. St. John, Charles P. Williams, and William A. Cummings, complainants.

This defendant, by protestation, not confessing or acknowledging

all or any of the matters or thing in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for causes of demurrer sheweth:

First. That it appears by the said bill, and upon the face thereof, that the same is exhibited against this defendant and thirteen other persons and corporations as defendants, and for several seperate and distinct and independent matters and causes which have no relation to each other, and wherein or in the greater part whereof this defendant is in no way interested, connected, or concerned, and ought not to be implicated and joins distinct matters together which do not depend on each other, and thereby rendering the pleadings, orders, and proceedings in this cause, as against this defendant, unnecessarily intricate and prolix, and this defendant put to unnecessary costs and expenses.

66 Second. That it appears by the said bill and upon the face thereof, that the defendants The Iowa and Minoesota Railway and Construction Company is a corporation created under the laws of the State of Iowa; that the McGregor Western Railway Company is a corporation created under the laws of the State of Iowa, and that the Minnesota Railroad Company is a corporation created under the laws of the State of Minnesota; and that the said corporations, and each of them, are not within the jurisdiction of this honorable court; and that the said corporations, and each of them are necessary and indispensible parties, and without whose presence in court, this honorable court cannot grant the said complainants the relief, by them prayed, in and by their said bill of complaint.

Third. That it appears by the said bill, and upon the face thereof, that the assistant secretary of the Milwaukee and Prairie du Chien Railway Company (whose name is not stated therein) is a necessary and indispensable party, and without whose presence in court this honorable court cannot grant the complaints the relief prayed in and by their said bill of complaint.

Fourth. That it does not appear in and by said bill of complaint but that the same should have been exhibited by and in the name of the Milwaukee and Prairie du Chien Railway Company.

Fifth. That as to all the allegations and facts mentioned and set forth in said bill of complaint, upon which complainants in and by their said bill pray that said defendants, Mitchell, Crocker, Merrill, Sage, James, Gurnee, Cowdry, Rudd, and Stimson, may be removed from their offices as directors in the said Milwaukee and Prairie du Chien Railway Company, (and the prayer of the said bill in that behalf,) this honorable court has not jurisdiction.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly

prays to be hence dismissed with his reasonable costs in this behalf sustained.

FINCHES, LYNDE & MILLER,
Solicitors for the defendant, the Milwaukee and Prairie du Chien Railway Company.
O. H. WALDO,
MATT. H. CARPENTER,
Of Counsel.

67 I hereby certify that in my opinion the above demurrer to well founded in law.

A. FINCH,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Alexander Mitchell, being duly sworn, deposes and says, that he is the president of the Milwaukee and Prairie du Chien Railway Company, defendant above named; and that the above demurrer is not interposed for delay, and further saith not.

ALEX. MITCHELL.

Subscribed and sworn to before me, this 16th day of April, A. D. 1867.

FRANCIS BLOODGOOD,
U. S. Commissioner.

Exhibit No. 4.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America, for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the eight day) of April, A. D. 1867; present, the Honorable Andrew G. Miller, district judge, presiding. On the eighteenth day of the said term, to wit: on the sixth day of May, A. D. 1867, the following proceedings were had, to wit:

SAMUEL B. HOW, JOHN CATLIN, *et. al.*,
vs.
THE MILWAUKEE and PRAIRIE DU CHIEN Railway Company, *et. al.* } In equity.

This day came the parties by their counsel; and on consideration of the several demurrers to this bill, and of the rule for an injunction and the appointment of a receiver, and of the arguments of counsel therein, it is ordered by the court that the said demurrers be, and hereby are, overruled, and that the defendants answer this bill by the first Monday of June next.

And it is further ordered by the court that an injunction be, and hereby is, granted until the further order of the court against the defendants served with notice, restraining the defendant, the
68 Milwaukee and Prairie du Chien Railway Company, and its present directors and all of its and their officers, agents, and

servants, and each of them, from paying any dividends, interest, or other moneys on accocnt of any stock issued in pursuance of any of the resolutions or proceedings of the said board of directors mentioned in the bill and the schedules thereto annexed, marked respectively B D E, that is, the resolution of the twelfth of September, 1866, for the payment of a dividend on common stock for the year 1861, marked schedule B; the resolution dated September 20, 1866, for the purchase of the McGregor Western railroad, marked schedule D. And the resolution approving a proposition for building a road by the Iowa and Minnesota Railway and Construction Company, marked schedule E. And also from receiving or counting any votes tendered at any election on account of the said stocks, and from recognizing or treating as valid any of such stocks in any manner whatever, and from transferring or causing or permitting the transfer or issue of any stock of the said Milwaukee and Prairie du Chien Railway Company upon its books or otherwise, which has been created or issued under the said resolutions. And from doing any act tending to impair or destroy the separate corporate powers of the said company.

And also restraining the said Milwaukee and Prairie du Chien Railway Company, and all the said other defendants, and the officers, agents, and servants of them, and each of them, from transferring or otherwise using or disposing of any of the stock of the said Milwaukee and Prairie du Chien Railway Company, created or issued under and by virtue of the aforesaid resolutions, or any of them; and especially from giving or attempting to give any vote, assent, or agreement based upon or in consequence of such stock, or of the issuing or holding thereof, and from receiving any dividends or interest or other money from the said Milwaukee and Prairie du Chien Railway Company, or any of its agents or officers on account thereof; and from hindering or obstructing any committee properly appointed by stockholders of the said last named company from making a full and free examination of the affairs of the said company, and of its books, papers and property.

And it is ordered that the rule for the appointment of a receiver be further held under advisement.

69 *Exhibit No. 5.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

[L. S.]

The President of the United States of America, to the Milwankee and Prairie du Chien Railway Company, Milwaukee and St. Paul Railway Company, Alexander Mitchell, Hans Crocker, Sherburne S. Merrill, Iowa and Minnesota Railway and Construction Company, the McGregor Western Railway Company, the Minnesota Central Railway Company, Walter S. Gurnee, and Nathaniel A. Cowdrey, and to your attorneys, counsellors, solicitors, trustees, agents, and servants, and to each and every of you, greeting:

Whereas, it has been represented to the judge of the circuit court

of the United States of America for the district of Wisconsin, in equity, on the part of Samuel B. How, John Catlin, James L. Bogert, Thomas C. Streets, G. D. Rosengarten, Grace J. Coe, Samuel G. Coe, William L. Lockwood, George B. St. John, Chas. P. Williams and William A. Cummings, that they have lately exhibited their bill of complaint in said court, before the judges thereof, against you, the said defendants in said bill mentioned, to be relieved touching the matters therein complained of.

Therefore, in consideration thereof, and of the particular matters in the said bill set forth, you, the said Milwaukee and Prairie du Chien Railway Company, and its present directors, and all of its and their officers, agents, and servants, and each of them, and the persons before mentioned, and each and every of you, and in the penalty which may ensue, are hereby strictly charged and commanded that you, and each and every of you, do absolutely desist and refrain from paying any dividends, interest, or other moneys, on account of any stock issued in pursuance of any of the resolutions or proceedings of the said board of directors mentioned in the bill and the schedule thereto annexed, marked respectively B D E; that is, the resolution of the twelfth of September, 1866, for the payment of a dividend on common stock for the year 1867, marked schedule B. The resolution dated September 20, 1866, for the purchase of the McGregor Western Railroad, marked schedule D, and the resolution approving a proposition for building a road by the Iowa and Minnesota Railway and Construction Company, marked schedule E, and also from receiving or counting any votes tendered at any election on account of
70 the said stocks; and from recognizing or treating as valid any of such stocks in any manner whatever; and from transferring or causing or permitting the transfer or issue of any stock of the said Milwaukee and Prairie du Chien Railway Company, upon its books or otherwise, which has been created or issued under the said resolution; and from doing any act tending to impair or destroy the separate corporate powers of the said company.

And you, the said Milwaukee and Prairie du Chien Railway Company, and all of the said other defendants, and the officers, agents and servants of them, and each of them, are hereby restrained and enjoined from transferring or otherwise using or disposing of any of the stock of the said Milwaukee and Prairie du Chien Railway Company, created or issued under and by virtue of the aforesaid resolutions, or any of them, and especially from giving or attempting to give any vote, assent or agreement based upon or in consequence of such stock, or of the issuing or holding thereof, and from receiving any dividend or interest or other money from the said Milwaukee and Prairie du Chien Railway Company, or any of its agents or officers on account thereof, and from hindering or obstructing any committee properly appointed by stockholders of the last named company from making a full and free examination of the affairs of the said company, and of its books, papers, and property.

This process is directed to the marshal for the district of Wisconson, who is hereby commanded to serve the same upon the said Mil-

waukee and Prairie du Chien Railway Company, Milwaukee and St. Paul Railway Company, Alexander Mitchell, Hans. Crocker, Sherburn S. Merrill, Iowa and Minnesota Railway and Construction Company, the McGregor Western Railway Company, the Minnesota Central Railway Company, Nathaniel A. Cowdrey, and Walter S. Gurnee, if found within his district, and due return thereof make without delay.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in the said district, this sixth day of May, in the year of our Lord one thousand eight hundred and sixty-seven and of our Independence the ninety-first.

EDWARD KURTZ, *Clerk.*

SMITH & SALOMON, *Solicitors.*

71 To the judges of the circuit court of the United States for the district of Wisconsin; and to Samuel B. How, John Catlin, James L. Bogert, Thomas C. Streets, G. D. Rosengarten, Grace J. Coe, Samuel G. Coe, William L. Lockwood, George B. St. John, Charles P. Williams and William A. Cummings:

Please take notice, that on the opening of the Supreme Court of the United States of America, at the court room of said Court in the Capitol in the City of Washington, in the District of Columbia, on the morning of Friday, May 17th, A. D. 1867, or as soon thereafter as counsel can be heard, the Milwaukee and Prairie du Chien Railway Company will move the said Supreme Court on the preceding suggestion hereto attached for a writ of prohibition according to the prayer of said suggestion.

Dated May 11th, A. D. 1867.

ASAHEL FINCH, Jr.,
MATT. H. CARPENTER,
Counsel for said Company.

72 DISTRICT OF WISCONSIN, *ss:*

I hereby accept service of a copy of the within, this 11th day of May, A. D. 1867.

SMITH & SALOMON,
Att'y and Counsel for Sam'l B. How, and others, complainants in the bill of complaint within named.

I hereby admit service of a copy of the within, this 11th day of May, A. D. 1867.

A. G. MILLER,
District Judge.